

APPROPRIATIONS

CHAPTER 1

HOUSE BILL NO. 1001

(Appropriations Committee)
(At the request of the Governor)

GOVERNOR

AN ACT to provide an appropriation for defraying the expenses of the office of the governor; and to amend and reenact sections 54-07-04 and 54-08-03 of the North Dakota Century Code, relating to the salaries of the governor and lieutenant governor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the office of the governor for the purpose of defraying the expenses of the governor, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Salaries and wages	\$1,734,560
Operating expenses	178,870
Equipment	5,000
Contingency	10,000
Roughrider awards	<u>8,000</u>
Total general fund appropriation	\$1,936,430

SECTION 2. APPROPRIATION - AUTHORIZATION - GOVERNOR'S OFFICE. The governor's office is hereby authorized to receive and expend any federal or private funds, which are hereby appropriated, which become available during the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 3. AMENDMENT. Section 54-07-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-07-04. Salary of governor. The annual salary of the governor is ~~sixty-nine~~ seventy-three thousand ~~six~~ one hundred ~~fifty~~ seventy-six dollars through June 30, ~~1996~~ 1998, and ~~seventy-one~~ seventy-five thousand ~~forty-two~~ three hundred seventy-two dollars thereafter.

SECTION 4. AMENDMENT. Section 54-08-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-08-03. Salary of lieutenant governor. The annual salary of the lieutenant governor is ~~fifty-seven~~ sixty thousand ~~two~~ one hundred ~~thirty-eight~~ thirty-two dollars through June 30, ~~1996~~ 1998, and ~~fifty-eight~~ sixty-one thousand ~~three~~ nine hundred ~~eighty-three~~ forty-four dollars thereafter.

Approved April 9, 1997

Filed April 10, 1997

CHAPTER 2

HOUSE BILL NO. 1002

(Appropriations Committee)
(At the request of the Governor)

SECRETARY OF STATE

AN ACT to provide an appropriation for defraying the expenses of the secretary of state and public printing; and to amend and reenact section 54-09-05 of the North Dakota Century Code, relating to the salary of the secretary of state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the secretary of state for the purpose of defraying the expenses of the secretary of state and public printing, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Subdivision 1.

SECRETARY OF STATE

Salaries and wages	\$1,667,780
Operating expenses	1,103,190
Equipment	65,000
Petition review	<u>14,000</u>
Total general fund appropriation	\$2,849,970

Subdivision 2.

SECRETARY OF STATE - PUBLIC PRINTING

Operating expenses	\$ 441,000
Total general fund appropriation	<u>\$ 441,000</u>
Grand total general fund appropriation H.B. 1002	\$3,290,970

SECTION 2. AMENDMENT. Section 54-09-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-09-05. Salary of secretary of state. The annual salary of the secretary of state is ~~fifty-two~~ fifty-five thousand ~~seven~~ four hundred ~~eighty-seven~~ sixty-four dollars through June 30, ~~1996~~ 1998, and ~~fifty-three~~ fifty-seven thousand ~~eight~~ one hundred ~~forty-three~~ twenty dollars thereafter.

Approved April 3, 1997

Filed April 3, 1997

CHAPTER 3

HOUSE BILL NO. 1003 (Appropriations Committee) (At the request of the Governor)

ATTORNEY GENERAL

AN ACT to provide an appropriation for defraying the expenses of the attorney general; and to amend and reenact subsection 1 of section 53-06.1-14 and section 54-12-11 of the North Dakota Century Code, relating to license fees for pull tabs and bingo card manufacturers and to the salary of the attorney general.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the attorney general for the purpose of defraying the expenses of the attorney general, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Salaries and wages	\$12,887,894
Operating expenses	4,630,014
Equipment	1,044,900
Grants	5,790,003
Arrest and return of fugitives	18,795
Controlled substance	4,000
Litigation fees	139,024
Gaming commission	19,400
Racing commission	219,744
National criminal history improvement project	1,135,781
Law enforcement programs	<u>620,701</u>
Total all funds	\$26,510,256
Less estimated income	<u>13,786,432</u>
Total general fund appropriation	\$12,723,824

SECTION 2. FIRE AND TORNADO FUND. The estimated income line item in section 1 of this Act includes the sum of \$834,973, or so much of the sum as may be necessary from the state fire and tornado fund, for the purpose of defraying the expenses related to the state fire marshal program.

SECTION 3. ASSET FORFEITURE FUND. The sum of \$30,000 is available from the asset forfeiture fund to the attorney general as included in estimated income of section 1 of this Act.

SECTION 4. COLLECTIONS. Section 1 of this Act includes the appropriation of up to \$15,000 in revenues collected from fees charged for gaming law and administrative rules manuals published by the attorney general for the period beginning July 1, 1997, and ending June 30, 1999.

SECTION 5. LOCAL GAMING ENFORCEMENT GRANTS. The attorney general, through the state treasurer's office, shall pay, from funds

appropriated in the grants line item in section 1 of this Act, \$126,769 per quarter to cities and counties in proportion to the adjusted gross proceeds within each city, for sites within city limits, or within each county, for sites outside city limits, to the total adjusted gross proceeds for the biennium beginning July 1, 1997, and ending June 30, 1999. The attorney general may make a payment to a city or county pursuant to this section only if the amount owed to a city or county for that quarter is ten dollars or more. Any amounts received by a city or county under this section must be used by the city or county for expenses connected with gaming enforcement within the city or county.

¹ **SECTION 6. AMENDMENT.** Subsection 1 of section 53-06.1-14 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A manufacturer of pull tabs, manufacturer of bingo cards, manufacturer of pull tab dispensing devices, manufacturer's distributor of pull tab dispensing devices, and distributor shall apply annually for a license upon a form prescribed by the attorney general before the first day of April in each year and shall submit the appropriate license fee. Each applicant shall provide such necessary and reasonable information as the attorney general may require. The license fee for a distributor is one thousand five hundred dollars. The license fee for a manufacturer's distributor is five hundred dollars. The license fee for a manufacturer of pull tab dispensing devices, manufacturer of pull tabs, bingo cards, or both a manufacturer of pull tabs and bingo cards, is ~~two~~ four thousand dollars.

SECTION 7. AMENDMENT. Section 54-12-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-12-11. Salary of attorney general. The annual salary of the attorney general is ~~fifty-nine~~ sixty-two thousand five hundred ~~seventy-six~~ ninety-two dollars through June 30, ~~1996~~ 1998, and ~~sixty~~ sixty-four thousand ~~seven~~ four hundred ~~sixty-eight~~ sixty-four dollars thereafter.

Approved April 10, 1997
Filed April 11, 1997

¹ Section 53-06.1-14 was also amended by section 18 of House Bill No. 1167, chapter 428.

CHAPTER 4

HOUSE BILL NO. 1004 (Appropriations Committee) (At the request of the Governor)

STATE AUDITOR

AN ACT to provide an appropriation for defraying the expenses of the state auditor; and to amend and reenact section 54-10-10 of the North Dakota Century Code, relating to the salary of the state auditor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state auditor for the purpose of defraying the expenses of the state auditor, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Administration	\$ 259,483
Division of local government audits	1,130,139
Division of state audits	3,363,047
Mineral royalty auditing	<u>682,420</u>
Total all funds	\$5,435,089
Less estimated income	<u>1,812,559</u>
Total general fund appropriation	\$3,622,530

SECTION 2. APPROPRIATION. Section 1 of this Act includes an appropriation of up to \$1,130,139 in funds generated by the state auditor from political subdivision audit service fees for the period beginning July 1, 1997, and ending June 30, 1999. Any amount in excess of \$1,130,139 must be deposited in the state auditor operating account and made available for appropriation after June 30, 1999.

SECTION 3. LINE ITEM TRANSFERS. Upon approval of the emergency commission, the state auditor may transfer between various line items in section 1 of this Act appropriation authority of up to ten percent of a given line item to adjust for changing circumstances in meeting established performance measures. Any further transfers must be approved by the budget section.

SECTION 4. AMENDMENT. Section 54-10-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-10-10. Salary of state auditor. The annual salary of the state auditor is ~~fifty-two~~ fifty-five thousand ~~seven~~ four hundred ~~eighty-seven~~ sixty-four dollars through June 30, ~~1996~~ 1998, and ~~fifty-three~~ fifty-seven thousand ~~eight~~ one hundred ~~forty-three~~ twenty dollars thereafter.

Approved April 10, 1997
Filed April 11, 1997

CHAPTER 5

HOUSE BILL NO. 1005

(Appropriations Committee)
(At the request of the Governor)

STATE TREASURER

AN ACT to provide an appropriation for defraying the expenses of the state treasurer; and to amend and reenact section 54-11-13 of the North Dakota Century Code, relating to the salary of the state treasurer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the state treasurer for the purpose of defraying the expenses of the state treasurer, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Salaries and wages	\$560,331
Operating expenses	95,079
Equipment	<u>10,000</u>
Total general fund appropriation	\$665,410

SECTION 2. AMENDMENT. Section 54-11-13 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-11-13. Salary of state treasurer. The annual salary of the state treasurer is ~~fifty-two~~ fifty-five thousand ~~seven~~ four hundred ~~eighty-seven~~ sixty-four dollars through June 30, ~~1996~~ 1998, and ~~fifty-three~~ fifty-seven thousand ~~eight~~ one hundred ~~forty-three~~ twenty dollars thereafter.

Approved March 7, 1997
Filed March 10, 1997

CHAPTER 6

HOUSE BILL NO. 1006

(Appropriations Committee)
(At the request of the Governor)

TAX COMMISSIONER

AN ACT to provide an appropriation for defraying the expenses of the office of the state tax commissioner; to provide a statement of legislative intent; and to amend and reenact section 57-01-04 of the North Dakota Century Code, relating to the salary of the state tax commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds, to the state tax commissioner for the purpose of defraying the expenses of the state tax commissioner for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Salaries and wages	\$11,641,812
Operating expenses	4,460,817
Equipment	229,384
City tax administration fees	50,000
Motor fuels federal grant	<u>303,572</u>
Total all funds	\$16,685,585
Less estimated income	<u>303,572</u>
Total general fund appropriation	\$16,382,013

SECTION 2. TRANSFER. There is hereby transferred to the general fund in the state treasury, out of motor vehicle fuel tax revenue, collected pursuant to section 57-43.1-02, the sum of \$1,128,872 for the purpose of reimbursing the general fund for expenses incurred in the collection of the motor vehicle fuels and special fuels taxes and the administration of these taxes.

SECTION 3. LEGISLATIVE INTENT. It is the intent of the legislative assembly that the tax commissioner coordinate the development of "Project 2001", the department's new tax processing system to allow, when completed, the exchange of information with other agencies, where appropriate, and to share equipment and processes with other agencies, where possible.

SECTION 4. AMENDMENT. Section 57-01-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-01-04. Salary. The annual salary of the state tax commissioner is ~~fifty-two~~ fifty-five thousand ~~seven~~ four hundred ~~eighty-seven~~ sixty-four dollars through June 30, ~~1996~~ 1998, and ~~fifty-three~~ fifty-seven thousand ~~eight~~ one hundred ~~forty-three~~ twenty dollars thereafter.

Approved April 10, 1997
Filed April 10, 1997

CHAPTER 7

HOUSE BILL NO. 1007

(Appropriations Committee)
(At the request of the Governor)

LABOR COMMISSIONER

AN ACT to provide an appropriation for defraying the expenses of the office of the labor commissioner; and to amend and reenact section 34-05-01.2 of the North Dakota Century Code, relating to the salary of the labor commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds, to the labor commissioner for the purpose of defraying the expenses of the labor commissioner for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Salaries and wages	\$592,761
Operating expenses	101,200
Equipment	<u>7,000</u>
Total all funds	\$700,961
Less estimated income	<u>74,926</u>
Total general fund appropriation	\$626,035

SECTION 2. LEGISLATIVE INTENT - LINE ITEM TRANSFER FOR EQUIPMENT PURCHASE. It is the intent of the fifty-fifth legislative assembly that the labor commissioner utilize available funds within the 1997-99 appropriation for the purchase of a new printer. The emergency commission may authorize the transfer of funds between lines, if requested by the labor commissioner, for the purchase of a new printer.

SECTION 3. AMENDMENT. Section 34-05-01.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-05-01.2. (For effective date, see Note) Department of labor to be administered by commissioner of labor. The department of labor must be administered by a commissioner of labor who must be elected for a four-year term on a no-party ballot in the year 1966 and every four years thereafter in the same manner as provided for no-party candidates pursuant to title 16.1. The term of the commissioner of labor commences on the same day following the commissioner's election as the terms for other elected state officials. The commissioner of labor shall possess the same qualifications for office as the commissioner of agriculture. The annual salary of the commissioner of labor is ~~fifty-two~~ fifty-four thousand ~~two~~ nine hundred ~~ninety-seven~~ forty-eight dollars through June 30, ~~1996~~ 1998, and ~~fifty-three~~ fifty-six thousand ~~three~~ five hundred ~~forty-three~~ ninety-two dollars thereafter.

(For effective date, see Note) Labor commissioner to administer department of labor. Beginning January 1, 1999, the governor shall appoint a labor commissioner to administer the department of labor. The labor commissioner shall serve at the pleasure of the governor.

Approved April 9, 1997

Filed April 10, 1997

CHAPTER 8

HOUSE BILL NO. 1008

(Appropriations Committee)
(At the request of the Governor)

PUBLIC SERVICE COMMISSION

AN ACT to provide an appropriation for defraying the expenses of the public service commission; and to amend and reenact sections 49-01-05 and 60-02-07 of the North Dakota Century Code, relating to the salary of public service commissioners and public warehouse licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds, to the public service commission for the purpose of defraying the expenses of the public service commission, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Salaries and wages	\$4,315,991
Operating expenses	1,068,765
Equipment	58,711
Grants	6,000
AML contractual services	<u>3,668,492</u>
Total all funds	\$9,117,959
Less estimated income	<u>5,781,190</u>
Total general fund appropriation	\$3,336,769

SECTION 2. AMENDMENT. Section 49-01-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-01-05. Salary of commissioners. The annual salary of a commissioner is ~~fifty-two~~ fifty-five thousand ~~seven~~ four hundred ~~eighty-seven~~ sixty-four dollars through June 30, ~~1996~~ 1998, and ~~fifty-three~~ fifty-seven thousand ~~eight~~ one hundred ~~forty-three~~ twenty dollars thereafter. All fees received or charged by any ~~such~~ commissioner for any act or service rendered in any official capacity, ~~shall~~ must be accounted for and paid over by the commissioner monthly to the state treasurer and ~~shall~~ must be credited to the general fund of the state.

SECTION 3. AMENDMENT. Section 60-02-07 of the North Dakota Century Code is amended and reenacted as follows:

60-02-07. Public warehouse license - How obtained - Fee. An annual license must be obtained from the commission for each public warehouse in operation in this state. The license expires on July thirty-first of each year. No license may describe more than one public warehouse nor grant permission to operate any public warehouse other than the one described. The annual license fee for a public warehouse is ~~one~~ two hundred fifty dollars for a warehouse of a bushel capacity of two hundred thousand [7047.8 cubic meters] or less, ~~three~~ four hundred dollars for a

warehouse of a bushel capacity of more than two hundred thousand and one to and including not more than five hundred thousand [~~7047.83~~ 7047.8 to and including not more than 17619.54 cubic meters], and ~~four~~ five hundred dollars for a warehouse of a bushel capacity of more than five hundred thousand and one [~~17619.57~~ 17619.54 cubic meters] ~~or more~~. If a public warehouseman operates two or more warehouses in the same city or siding, in conjunction with each other and with the same working force, and ~~where~~ but keeps one set of books and records ~~is kept~~ for all such warehouses, and issues one series of scale tickets, warehouse receipts, checks, and credit-sale contracts ~~of but one series are issued~~ for the grain stored and purchased therein, only one license is required for the operation of all such warehouses. Where two or more warehouses are operated under one license, the license fee is based upon the combined bushel capacity of the warehouses. If the commission employs fewer than two full-time equivalent warehouse inspectors, each annual fee under this section is reduced by one hundred dollars.

Approved April 10, 1997
Filed April 10, 1997

CHAPTER 9

HOUSE BILL NO. 1009

(Appropriations Committee)
(At the request of the Governor)

AGRICULTURE COMMISSIONER

AN ACT to provide an appropriation for defraying the expenses of the agriculture commissioner; to provide a statement of legislative intent; and to amend and reenact section 4-01-21 of the North Dakota Century Code, relating to the salary of the agriculture commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the commissioner of agriculture for the purpose of defraying the expenses of the commissioner of agriculture for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Salaries and wages	\$3,023,812
Operating expenses	1,097,886
Equipment	32,900
Grants	561,700
Board of animal health	454,199
Ag mediation	1,377,537
Ag in the classroom	25,000
Anhydrous ammonia storage	20,444
Waterbank program	214,000
Pride of Dakota	150,000
Animal damage control	779,694
Safe send	552,133
Noxious weeds	959,529
Total all funds	<u>\$9,248,834</u>
Less estimated income	<u>4,658,594</u>
Total general fund appropriation	\$4,590,240

SECTION 2. ESTIMATED INCOME - FIRE AND TORNADO FUND.

The estimated income line item in section 1 of this Act includes the sum of \$20,444, or so much of the sum as may be necessary, from the state fire and tornado fund for the purpose of defraying the expenses of the anhydrous ammonia storage program.

SECTION 3. ESTIMATED INCOME - ENVIRONMENT AND RANGELAND PROTECTION FUND. The estimated income line item in section 1 of this Act includes the sum of \$1,491,902, or so much of the sum as may be necessary, from the environment and rangeland protection fund for the purpose of defraying the expenses of the pesticide regulation, pesticide disposal, pesticide registration, and noxious weeds programs, of which \$90,890 is for the pesticide regulation program, \$552,133 is for the pesticide disposal program, \$66,000 is for the pesticide registration program, and \$782,879 is for the noxious weeds program.

SECTION 4. TRANSFER. The office of management and budget shall transfer \$100,000 from the environment and rangeland protection fund to the minor use pesticide fund, for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 5. LEGISLATIVE INTENT. It is the intent of the legislative assembly that the board of animal health contract for veterinary services whenever appropriate and cost-effective for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 6. AMENDMENT. Section 4-01-21 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-01-21. Salary of commissioner of agriculture. The annual salary of the commissioner of agriculture is ~~fifty-two~~ fifty-five thousand ~~seven~~ four hundred ~~eighty-seven~~ sixty-four dollars through June 30, ~~1996~~ 1998, and ~~fifty-three~~ fifty-seven thousand ~~eight~~ one hundred ~~forty-three~~ twenty dollars thereafter.

Approved April 11, 1997
Filed April 11, 1997

CHAPTER 10

HOUSE BILL NO. 1010

(Appropriations Committee)
(At the request of the Governor)

INSURANCE COMMISSIONER

AN ACT to provide an appropriation for defraying the expenses of the insurance commissioner; and to amend and reenact section 26.1-01-09 of the North Dakota Century Code, relating to the salary of the insurance commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the insurance regulatory trust fund in the state treasury, not otherwise appropriated, and from other special funds derived from federal funds and other income, to the insurance commissioner for the purpose of defraying the expenses of the insurance commissioner, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Salaries and wages	\$4,045,813
Operating expenses	1,228,289
Equipment	40,445
Total special funds appropriation	\$5,314,547

SECTION 2. APPROPRIATION - INSURANCE TAX PAYMENTS TO FIRE DEPARTMENTS. There is hereby appropriated out of any moneys in the insurance tax distribution fund in the state treasury, not otherwise appropriated, the sum of \$5,200,000, or so much of the sum as may be necessary, to the commissioner of insurance for the purpose of making payments of insurance premiums to fire departments for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 3. BONDING FUND. Section 1 of this Act includes the sum of \$81,743, or so much of the sum as may be necessary, from the state bonding fund to pay bonding fund administrative expenses for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 4. FIRE AND TORNADO FUND. Section 1 of this Act includes the sum of \$796,992, or so much of the sum as may be necessary, from the state fire and tornado fund to pay fire and tornado fund administrative expenses for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 5. UNSATISFIED JUDGMENT FUND. Section 1 of this Act includes the sum of \$39,863, or so much of the sum as may be necessary, from the state unsatisfied judgment fund to pay unsatisfied judgment fund administrative expenses for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 6. PETROLEUM TANK RELEASE COMPENSATION FUND. Section 1 of this Act includes the sum of \$200,490, or so much of the sum as may be necessary, from the petroleum tank release compensation fund to pay petroleum tank release compensation fund administrative expenses for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 7. APPROPRIATION - COMPUTER SYSTEM PROJECT.

There is hereby appropriated out of any moneys in the insurance regulatory trust fund in the state treasury, not otherwise appropriated, the sum of \$275,000, or so much of the sum as may be necessary, to the insurance commissioner for the purpose of completing the insurance department's computer network project, for the biennium beginning July 1, 1997, and ending June 30, 1999. The insurance commissioner may not spend more than \$499,000 in total, for the computer network project during the 1995-97 biennium and the 1997-99 biennium.

SECTION 8. LEGISLATIVE INTENT - BUDGET SECTION REPORT.

It is the intent of the legislative assembly that the insurance commissioner utilize \$25,000 appropriated in section 1 of this Act to analyze during the biennium beginning July 1, 1997, and ending June 30, 1999, the amount of insurance payments to fire departments distributed to fire districts in fiscal years 1996, 1997, and 1998 and present a report to the budget section in December 1998 containing the commissioner's findings and the actions taken to stabilize the distribution of funds to each fire district.

SECTION 9. AMENDMENT. Section 26.1-01-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-01-09. Salary of commissioner. The annual salary of the commissioner is ~~fifty-two~~ fifty-five thousand ~~seven~~ four hundred eighty-seven dollars through June 30, ~~1996~~ 1998, and ~~fifty-three~~ fifty-seven thousand ~~eight~~ one hundred ~~forty-three~~ twenty dollars thereafter.

Approved April 10, 1997
Filed April 11, 1997

CHAPTER 11**HOUSE BILL NO. 1011**

(Appropriations Committee)
(At the request of the Governor)

SECURITIES COMMISSIONER

AN ACT to provide an appropriation for defraying the expenses of the office of the securities commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the securities commissioner for the purpose of defraying the expenses of the office of the securities commissioner, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Salaries and wages	\$597,005
Operating expenses	68,474
Equipment	2,000
Total general fund appropriation	<u>\$667,479</u>

Approved April 3, 1997
Filed April 3, 1997

CHAPTER 12

HOUSE BILL NO. 1012 (Appropriations Committee) (At the request of the Governor)

HUMAN SERVICES

AN ACT to provide an appropriation for defraying the expenses of the department of human services; to provide for the transfer of appropriations between agencies and institutions; to create and enact section 50-06-14.4 of the North Dakota Century Code, relating to projects involving services for the alzheimer's and related dementia population; to provide an exemption from section 54-44.1-11 and to authorize the sale of certain buildings on the grounds of the state hospital to the department of corrections and rehabilitation; to amend and reenact sections 25-04-20, 50-06-14.3, and 50-24.1-02.2 of the North Dakota Century Code, to amend and reenact the new section to chapter 23-09.3 as created by section 2 of chapter 254 of the 1995 Session Laws and the new section to chapter 23-16 to the North Dakota Century Code as created by section 3 of chapter 254 of the 1995 Session Laws, and to amend and reenact section 4 of chapter 561 of the 1991 Session Laws as amended by section 18 of chapter 2 of the 1993 Session Laws and by section 9 of chapter 34 of the 1995 Session Laws, relating to the westwood park assets management committee, human service center directors, state basic care program, a moratorium on long-term care bed capacity, and community resource allowance; to repeal section 15 of House Bill No. 1041 as enacted by the fifty-fifth legislative assembly; to provide for a legislative council study and reports to the budget section; to provide an effective date; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of human services and its various divisions, for the purpose of defraying their expenses, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Subdivision 1.

MANAGEMENT AND COUNCILS

Salaries and wages	\$	8,851,202
Operating expenses		13,214,066
Equipment		87,939
Grants		715,477
Loan fund - DD		1,840,956
Total all funds	\$	24,709,640
Less estimated income		14,208,075
Total general fund appropriation	\$	10,501,565

Subdivision 2.

ECONOMIC ASSISTANCE

Salaries and wages	\$	8,841,828
Operating expenses		29,027,234

Equipment	52,736
Capital improvements	2,543
Welfare reform contingency	159,800
Grants - assistance payments	175,180,115
Grants - medical assistance	611,485,197
Total all funds	\$ 824,749,453
Less estimated income	631,892,967
Total general fund appropriation	\$ 92,856,486

Subdivision 3.

PROGRAM AND POLICY

Salaries and wages	\$ 9,528,238
Operating expenses	13,589,797
Equipment	332,545
Capital improvements	1,619
Grants	101,104,517
Total all funds	\$ 124,556,716
Less estimated income	88,336,347
Total general fund appropriation	\$ 36,220,369

Subdivision 4.

NORTHWEST HUMAN SERVICE CENTER

Total all funds	\$ 7,753,411
Less estimated income	3,801,225
Total general fund appropriation	\$ 3,952,186

NORTH CENTRAL HUMAN SERVICE CENTER

Total all funds	\$ 12,567,842
Less estimated income	6,512,482
Total general fund appropriation	\$ 6,055,360

LAKE REGION HUMAN SERVICE CENTER

Total all funds	\$ 7,218,639
Less estimated income	3,202,436
Total general fund appropriation	\$ 4,016,203

NORTHEAST HUMAN SERVICE CENTER

Total all funds	\$ 15,851,751
Less estimated income	8,531,389
Total general fund appropriation	\$ 7,320,362

SOUTHEAST HUMAN SERVICE CENTER

Total all funds	\$ 16,744,297
Less estimated income	9,865,116
Total general fund appropriation	\$ 6,879,181

SOUTH CENTRAL HUMAN SERVICE CENTER

Total all funds	\$ 9,347,902
Less estimated income	4,421,354
Total general fund appropriation	\$ 4,926,548

WEST CENTRAL HUMAN SERVICE CENTER

Total all funds	\$ 14,984,354
Less estimated income	7,981,184
Total general fund appropriation	\$ 7,003,170

BADLANDS HUMAN SERVICE CENTER

Total all funds	\$ 8,118,947
Less estimated income	<u>3,837,857</u>
Total general fund appropriation	\$ 4,281,090

STATE HOSPITAL

Operations	\$ 54,618,607
Capital improvements	<u>1,901,400</u>
Total all funds	\$ 56,520,007
Less estimated income	<u>18,626,024</u>
Total general fund appropriation	\$ 37,893,983

DEVELOPMENTAL CENTER

Operations	\$ 39,233,420
Capital improvements	<u>262,000</u>
Total all funds	\$ 39,495,420
Less estimated income	<u>30,158,522</u>
Total general fund appropriation	\$ 9,336,898
Total all funds - subdivision 4	\$ 188,602,570
Total estimated income - subdivision 4	\$ 96,937,589
Total general fund appropriation - subdivision 4	\$ 91,664,981

Subdivision 5.

COMPUTER TECHNOLOGY APPROPRIATION

Total all funds	\$ 6,816,809
Less estimated income	<u>3,312,646</u>
Total general fund appropriation	\$ 3,504,163
Grand total general fund appropriation H.B. 1012	\$ 334,747,564
Grand total special fund appropriation H.B. 1012	\$ 834,887,624
Grand total all funds H.B. 1012	\$1,169,635,188

SECTION 2. LANDS AND MINERALS TRUST FUND. The amount of \$1,840,956, or so much of the sum as may be necessary, as appropriated in the developmentally disabled facility loan fund line item in section 1 of this Act, may be expended by the department of human services from the lands and minerals trust fund for the purpose of making payments of principal and interest to the common schools trust fund on any loans made from it pursuant to the developmentally disabled loan fund program nos. 2 and 3 for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 3. DEVELOPMENTAL DISABILITIES REVOLVING LOAN FUND. There may be expended by the department of human services, on or before June 1, 1999, from the cash balance of, and any payments deposited in, the revolving loan fund created under section 6-09.6-01, the sum of \$1,183,748, or so much of the sum as may be necessary, which is appropriated in section 1 of this Act.

SECTION 4. TRANSFER. Subject to the provisions of chapter 54-16, the director of the department of human services may transfer appropriation authority between agencies and institutions included in subdivisions 1 through 5 of section 1 of this Act.

SECTION 5. CORRELATION OF RESOURCES FOR DEPARTMENTAL CLIENTS. Notwithstanding section 4 of this Act, the director of the department of human services may transfer appropriation authority and authorized positions between agencies and institutions included within subdivision 4 of section 1 of this Act to correlate fiscal and staff resources with the flow of

institutional residents and human service center clients between community-based programs and institutions. The transfers from human service centers require prior consultation with the regional human service center advisory boards. To the extent permitted by law, the department of human services shall structure the financing arrangements between the state and counties so as to relieve county social service boards of fiscal responsibility for grants to and for recipients in the temporary assistance for needy families program in exchange for increased county responsibility for financing the local cost of administering the program.

SECTION 6. LEGISLATIVE INTENT - HUMAN SERVICE CENTER AND INSTITUTIONAL SERVICES. It is the intent of the legislative assembly that while the legislative assembly is allowing the human service centers and institutions more funding flexibility during the 1997-99 biennium, the human service centers and institutions are expected to:

1. Continue to utilize standards, guidelines, practices, and core services in effect on March 1, 1997, for providing human services pursuant to subsection 2 of section 50-06-05.3.
2. Continue to strive toward improving the quality of services and monitor and strive to achieve successful client outcomes.
3. Maximize available federal or other funds to provide services and for service enhancements in consultation with the central office.
4. Utilize innovative and effective methods of service delivery in order to achieve cost savings or to enhance the level of services provided to clients.

Human service centers are to provide appropriate community services to continue the trend of fewer state hospital and developmental center admissions to serve clients, to the extent possible, in a least restrictive environment.

SECTION 7. LEGISLATIVE INTENT - FULL-TIME EQUIVALENT EMPLOYEES - REPORTS TO THE BUDGET SECTION AND THE LEGISLATIVE COUNCIL. It is the intent of the legislative assembly that the human service centers, the state hospital, and the developmental center report to the budget section and the legislative council, or its designee, on the hiring of any additional full-time equivalent positions in addition to those authorized by the legislative assembly during the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 8. HUMAN SERVICE CENTER SERVICE COSTS - REIMBURSEMENT SYSTEM. Each regional human service center shall report its services provided during the biennium beginning July 1, 1997, and ending June 30, 1999, on a cost per service basis in a form designated by the executive director of the department of human services. The department shall analyze the data collected and develop, for the 1999-2001 biennium, a standardized reimbursement system for the human service centers based on service costs and any supplemental payment costs to be incorporated into the department's 1999-2001 biennium budget request.

SECTION 9. BUDGET SECTION APPROVAL. The welfare reform contingency may only be spent with prior budget section approval.

² **SECTION 10. AMENDMENT.** Section 25-04-20 of the North Dakota Century Code is amended and reenacted as follows:

25-04-20. Westwood park assets management committee. The westwood park assets management committee consists of eleven members appointed by the governor as follows: three members of the senate, two from the majority faction and one from the minority faction, and three members of the house of representatives, two from the majority faction and one from the minority faction; a representative of the department of human services; a representative of the department of economic development and finance; a representative of the attorney general's office; the mayor of Grafton; and the governor or the governor's designee. ~~The officers of the westwood park assets management committee must be elected annually. The~~ governor shall appoint a chairman. Any state agency may serve in an advisory capacity to the westwood park assets management committee at the discretion of the committee. The committee shall meet at ~~least twice each year and at other such~~ times as the committee or its chairman may direct. The legislative members of the committee are entitled to receive the same compensation per day as provided in section 54-35-10 for members of the legislative council and the necessary mileage and travel expenses provided in sections 44-08-04 and 54-06-09 while attending committee meetings or in the performance of such special duties as the committee may direct. The compensation provided for in this section may not be paid to any member of the committee who received salary or other compensation as a regular employee of the state, or any of its political subdivisions, or any institution or industry operated by the state. The westwood park assets management committee shall act when the legislative assembly is not in session to sell; lease; ~~and otherwise manage~~ the property of westwood park, subject to prior budget section approval. The department of human services shall provide staff services for the westwood park assets committee. Any conveyance made by the committee under this section is exempt from sections 54-01-05.2 and 54-01-05.5.

SECTION 11. AMENDMENT. Section 50-06-14.3 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-06-14.3. Department of human services to develop basic care facility ratesetting methodology. The department of human services shall develop a ratesetting methodology that provides for rates for all residents of basic care facilities that receive payments from the state or any political subdivision. The methodology may not provide for different rates for similarly situated residents because of the source of payment for any resident's care. The department shall consult with representatives of the basic care industry in this state in developing the ratesetting methodology. Beginning July 1, ~~1997~~ 1999, the department shall establish rates for all residents of basic care facilities that receive payments from the state or any political subdivision in accordance with the ratesetting methodology developed by the department. After June 30, ~~1997~~ 1999, no agency of the state or any political subdivision may make payments to a basic care facility that does not set rates at the levels established by the department.

SECTION 12. Section 50-06-14.4 of the North Dakota Century Code is created and enacted as follows:

² Section 25-04-20 was also amended by section 17 of Senate Bill No. 2052, chapter 432.

50-06-14.4. Alzheimer's and related dementia projects. The department of human services shall establish projects designed to meet the service needs of the alzheimer's and related dementia population. The projects established under this section must explore the financial and service viability of converting existing nursing facility or basic care capacity to a specific service environment that targets the alzheimer's and related dementia population. The state department of health shall cooperate with the department to ensure the success of the projects. The projects may be established notwithstanding subsections 2, 5, 10, and 11 and subdivision c of subsection 9 of section 50-24.5-01, relating to definitions for aid to aged, blind, and disabled persons, and subsection 1 of section 23-09.3-01, relating to the definition of a basic care facility.

SECTION 13. AMENDMENT. Section 50-24.1-02.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-24.1-02.2. Community spouse resource allowance. In determining eligibility for medical assistance applicants and recipients, the department of human services shall establish a community spouse resource allowance equal to the maximum community spouse resource allowance as provided by 42 U.S.C. 1396r-5(f)(2). This section applies to a community spouse of an institutionalized spouse. For purposes of this section, "institutionalized spouse" includes an individual who is described in 42 U.S.C. 1396a(a)(10)(A)(ii)(VI).

SECTION 14. AMENDMENT. The new section to chapter 23-09.3 of the North Dakota Century Code as created by section 2 of chapter 254 of the 1995 Session Laws is amended and reenacted as follows:

Moratorium on expansion of basic care bed capacity. ~~During the period after July 31, 1995, and before August 1, 1997,~~ Except when existing beds are converted for use by the alzheimer's and related dementia population under the projects provided for in section 50-06-14.4, the state department of health ~~and consolidated laboratories~~ may not issue a license under this chapter for any additional bed capacity ~~unless the expanded bed capacity was approved by the health council under chapter 23-17.2 before August 1, 1995~~ above the state's gross licensed capacity of one thousand four hundred seventy-one beds, adjusted by any reduction in beds before July 31, 1997, during the period between August 1, 1997, and July 31, 1999. Transfers of existing beds from one municipality to another municipality must be approved if the department of health licensing requirements are met, during the period August 1, 1997, to July 31, 1999, only to the extent that for each bed transfer approved the total number of licensed beds in the state is reduced by the same number transferred.

SECTION 15. AMENDMENT. The new section to chapter 23-16 of the North Dakota Century Code as created by section 3 of chapter 254 of the 1995 Session Laws is amended and reenacted as follows:

Moratorium on expansion of long-term care bed capacity. Notwithstanding sections 23-16-06 and 23-16-10, ~~during the period after July 31, 1995, and before August 1, 1997~~ except when existing beds are converted for use by the alzheimer's and related dementia population under the projects provided for in section 50-06-14.4, the state department of health ~~and consolidated laboratories~~ may not issue a license for any additional bed capacity ~~unless the expanded bed capacity was approved by the health council under chapter 23-17.2 before August 1, 1995~~ above the state's gross licensed capacity of seven thousand one hundred forty beds, adjusted by any reduction in beds before July 31, 1997, during the period between

August 1, 1997, and July 31, 1999. Transfers of existing beds from one municipality to another municipality must be approved if the department of health licensing requirements are met, during the period August 1, 1997, to July 31, 1999, only to the extent that for each bed transfer approved the total number of licensed beds in the state is reduced by the same number transferred. Certificate of need projects approved by the state health council before July 31, 1995, and not completed as of August 1, 1997, are considered to be within the state's licensed long-term care bed capacity as authorized by this section and may be completed. For long-term care bed transfers to be made within the state before the application of the one-for-one provisions in this section, the proposals for the transfer must have occurred and been discussed with the department of health before April 1, 1997, and confirmed with contracts executed between the parties to the transfer, and filed with the department of health before June 1, 1997, providing for the bed transfers to be completed by January 1, 1998, and not exceeding the state's licensed long-term bed capacity as authorized by this section.

SECTION 16. AMENDMENT. Section 4 of chapter 561 of the 1991 Session Laws as amended by section 18 of chapter 2 of the 1993 Session Laws and by section 9 of chapter 34 of the 1995 Session Laws is amended and reenacted as follows:

SECTION 4. PROCEEDS - APPROPRIATION. The proceeds from the sale of land, property, and equipment at westwood park must be deposited in the lands and minerals trust fund. There is hereby appropriated \$200,000, or so much thereof as may be necessary, from the lands and minerals trust fund, to the department of human services for capital improvements or demolition of existing buildings at westwood park for the period beginning July 1, 1991, and ending June 30, ~~1997~~ 1999.

SECTION 17. TRANSFER OF LAND AUTHORIZED.

1. The department of human services may sell to the department of corrections and rehabilitation the forensic unit building, the ET building and adjacent gymnasium, and surrounding real property.
2. The authorized sale is exempt from sections 54-01-05.2 and 54-01-05.5.

SECTION 18. EXEMPTION FROM BIDDING REQUIREMENTS. Notwithstanding any other provision of law relating to public contracts or bidding requirements, the department of human services may contract and expend funds for the renovation of the state hospital to accommodate patients as a result of any sale of the property described in section 17 of this Act.

SECTION 19. COMPUTER DEVELOPMENT COSTS - BUDGET SECTION APPROVAL. The appropriation in subdivision 5 contains funding for the following computer development projects:

PROJECT	GENERAL FUND	OTHER FUNDS	TOTAL
TEEM - release 3	\$ 899,607	\$ 473,037	\$1,372,644
RESPOND - release 3	260,583	137,021	397,604
State hospital	1,800,000		1,800,000
Medical - TANF	379,307	2,537,922	2,917,229
Child care	<u>164,666</u>	<u>164,666</u>	<u>329,332</u>
Total	\$3,504,163	\$3,312,646	\$6,816,809

The department of human services shall receive prior budget section approval before exceeding the costs for the named projects. If savings are projected for the computer projects, the department of human services may request budget section approval to start other projects with projected savings. The department, as it develops the reforming and enhancing services for the people of North Dakota (RESPOND) computer system, shall periodically report to the budget section of the legislative council during the 1997-99 biennium on the status of the development of the system, system costs and benefits, and the receipt of the matching federal funds. Except as may be waived by approval of the budget section, the department may not spend general fund appropriations made by the fifty-fifth legislative assembly for the RESPOND computer system unless approval for the cost allocation plan for the receipt of matching federal funds in the amounts not less than eighty-five percent of the amounts estimated during the fifty-fifth legislative assembly has been received from the appropriate federal agency.

Except as may be waived by approval of the budget section of the legislative council, the department of human services shall meet the requirements provided by the administration for children and families of the United States department of health and human services in its communication dated February 12, 1997, related to the state's development of the reforming and enhancing services for the people of North Dakota (RESPOND) and training, education, employment, and management (TEEM) project. The requirements include information regarding client eligibility and expert system rules, cost benefit analysis for the TEEM and RESPOND projects, and a revised budget for the TEEM and RESPOND projects.

SECTION 20. LEGISLATIVE INTENT - COMPUTER DEVELOPMENT.

It is the intent of the legislative assembly that the department of human services not enter into contracts for computer development that require the expenditure of funds in future bienniums without the prior approval of the legislative assembly.

SECTION 21. LEGISLATIVE INTENT - CASE MANAGEMENT - PILOT PROJECTS. It is the intent of the legislative assembly that the department of human services may establish pilot projects for expanded long-term care case management to assist functionally impaired adults in accessing necessary services to maintain the appropriate level of independence in the least restrictive setting at the lowest possible cost and that these pilot projects be financed within available department resources.

SECTION 22. LEGISLATIVE INTENT - TRANSITIONAL SERVICES - DEVELOPMENTALLY DISABLED STUDENTS. It is the intent of the legislative assembly that the disability services division of the department of human services, the office of special education of the department of public instruction, and local special education units explore opportunities for collaboration and shared funding in the provision of transition services to developmentally disabled students between the ages of eighteen and twenty-one.

SECTION 23. LEGISLATIVE INTENT - WAGE INCREASES FOR LOW-INCOME DIRECT CONTACT STAFF OF COMMUNITY DEVELOPMENTAL DISABILITIES PROVIDER AGENCIES. In addition to any wage increases for direct contact staff financed out of the annual inflationary adjustments contained in subdivision 2 of section 1 of this Act, it is the intent of the legislative assembly that community developmental disabilities provider agencies attempt to mitigate staff turnover during the 1997-99 biennium by augmenting the wages of low-income direct contact staff with \$4,695,337 appropriated within subdivision 2 of section 1 of this Act and allocated by the department of human services for such purpose.

SECTION 24. LEGISLATIVE INTENT - WAGE INCREASES FOR CERTIFIED NURSE AIDE STAFF - NURSING HOME. It is the intent of the legislative assembly that annual inflationary adjustments contained in subdivision 2 of section 1 of this Act for nursing home reimbursement be used by nursing homes to emphasize reducing certified nurse aide staff turnover by adjusting staff wages.

SECTION 25. LEGISLATIVE INTENT - PILOT PROJECT FOR LOW-INCOME PARENTS PROVIDING SERVICES TO DEVELOPMENTALLY DISABLED ADULT CHILDREN - FEDERAL WAIVERS - BUDGET SECTION REPORTS.

1. It is the intent of the legislative assembly that the department of human services seek appropriate federal waivers and establish a pilot program in one human service region to provide a subsidy on behalf of adult developmentally disabled children, age twenty-two and older, residing in the home of each adult child's parent or parents. The pilot program must:
 - a. Be limited to no more than five adult developmentally disabled children;
 - b. Provide subsidies substantially in the form of the family subsidy program;
 - c. Be limited to five hundred dollars per month per eligible adult developmentally disabled child; and
 - d. Be provided only on behalf of developmentally disabled adult children whose parent's income, not counting any form of means-tested public benefit, is no more than the federal poverty level applicable to a family of a size that includes the adult developmentally disabled child, that child's parent or parents, and minor children of that parent or those parents, living with the developmentally disabled adult child.
2. The pilot program required by this section must be based on policies developed and implemented without rulemaking that may be otherwise required under law.
3. The department shall study the provision of subsidies under this section and report on the status of available federal waivers and recommendations for the 1999-2001 biennium to the budget section of the legislative council.

SECTION 26. EFFECTIVE DATE - EXPIRATION DATE. Section 25 of this Act becomes effective on April 1, 1997, and is effective through June 30, 1999, and after that date is ineffective. Sections 14 and 15 are effective on August 1, 1997.

SECTION 27. REPEAL. If House Bill No. 1041 as enacted by the fifty-fifth legislative assembly becomes effective, section 15 of House Bill No. 1041 is repealed.

SECTION 28. DEPARTMENT OF HUMAN SERVICES REPORTS TO BUDGET SECTION - HUMAN SERVICE CENTER, STATE HOSPITAL, AND DEVELOPMENTAL CENTER BLOCK GRANT ACCOUNTABILITY. The department of human services shall report to the budget section of the legislative council by June 30, 1998, regarding human service center, state hospital, and

developmental center block grant accountability including information regarding employee turnover and vacancies, human service center budget status and cash flow, clinical services including persons served, changes in client demand for services, waiting lists, impact on deinstitutionalization, and external purchase of services, regional needs assessment and planning, and development of an evaluation and outcome report.

SECTION 29. LEGISLATIVE INTENT - TRAUMATIC BRAIN INJURY PROGRAM ESTABLISHMENT - DEVELOPMENTAL CENTER.

Notwithstanding section 15 of this Act, it is the intent of the legislative assembly that the developmental center be allowed to establish a traumatic brain injury program, subject to emergency commission and budget section approval, including up to twenty full-time equivalent employees, if the program can be established at the same or at a reduced cost and funded from other departmental and third-party resources.

SECTION 30. REPORTS TO BUDGET SECTION - WELFARE FRAUD - COST-EFFECTIVENESS. The department of human services shall periodically report to the budget section regarding the welfare fraud detection programs including reports on cost-effectiveness and avoidance, during the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 31. LEGISLATIVE COUNCIL STUDY - WELFARE REFORM IMPLEMENTATION - DEPARTMENT OF HUMAN SERVICES REPORTING. The legislative council shall consider studying the monitoring of North Dakota's welfare reform implementation efforts to determine the effectiveness of welfare reform during the 1997-98 interim. The department of human services and persons or parties conducting the review shall periodically report to the legislative council, or its designee, regarding the evaluation of welfare reform during the 1997-98 interim.

SECTION 32. LEGISLATIVE COUNCIL STUDY - BASIC CARE RATE EQUALIZATION. The legislative council shall consider studying basic care rate equalization, including the cost impacts to the state and private pay residents during the 1997-98 interim.

SECTION 33. LEGISLATIVE INTENT - OPERATING MARGIN - BASIC CARE RATES. It is the intent of the legislative assembly that the rates set for basic care facilities under subsection 3 of section 50-24.5-02 during the 1997-99 biennium include an operating margin at a total cost of \$104,690, or so much thereof as may be necessary, appropriated within subdivision 2 of section 1 of this Act. The operating margin must be based on two percent of actual direct care costs and a limit rate set to produce such results.

SECTION 34. LEGISLATIVE COUNCIL STUDY - HUMAN SERVICE CENTER BLOCK GRANTS. If the legislative council studies the department of human services pursuant to Senate Concurrent Resolution No. 3042, approved by the fifty-fifth legislative assembly, during the 1997-98 interim, the study should review the block grant method of appropriating funds to regional human service centers, including incentives, accountability, and budgeting processes.

SECTION 35. LEGISLATIVE INTENT - CHILD SUPPORT EMPLOYEES. It is the intent of the legislative assembly that the eleven full-time equivalent child support positions added by the fifty-fifth legislative assembly for the department of human services are authorized only for the biennium beginning July 1, 1997, and ending June 30, 1999, and that if the department requests the full-time equivalent authorization and related funding for any of these positions for

the 1999-2001 biennium, the request must be specifically identified as a budget change in the department's 1999-2001 biennium budget request.

SECTION 36. EMERGENCY. The appropriation contained in subdivision 4 of section 1 of this Act for the state hospital includes \$1,295,000 of other funds for remodeling of state hospital buildings to accommodate the relocation of patients from buildings to be sold to the department of corrections and rehabilitation, which is declared to be an emergency measure and those funds are available immediately upon filing of this Act with the secretary of state. Sections 12, 17, 18, and 25 of this Act are declared to be an emergency measure.

Approved April 14, 1997

Filed April 14, 1997

CHAPTER 13

HOUSE BILL NO. 1013

(Appropriations Committee)
(At the request of the Governor)

PUBLIC INSTRUCTION

AN ACT to provide an appropriation for defraying the expenses of the department of public instruction, the school for the deaf, the school for the blind, and the state library; to create and enact two new sections to chapter 15-34.1 of the North Dakota Century Code, relating to home schooling for children with autism; to amend and reenact sections 15-21-02, 25-01-03, 54-24-01, and subsection 3 of section 54-44.3-20 of the North Dakota Century Code, relating to the salary of the superintendent of public instruction and to the classified status of the superintendent of the school for the blind, the superintendent of the school for the deaf, and the state librarian; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of public instruction, the school for the deaf, the school for the blind, and the state library for the purpose of defraying the expenses of their various divisions, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Subdivision 1.

DEPARTMENT OF PUBLIC INSTRUCTION

Salaries and wages	\$ 10,872,941
Operating expenses	8,704,612
Equipment	768,920
Grants - foundation aid and transportation	466,356,259
Grants - revenue supplement payments	3,100,000
Grants - tuition apportionment	49,273,144
Grants - special education	40,550,000
Grants - goals 2000	2,600,000
Grants - other grants	123,940,847
Grants - technology reimbursement payments	5,000,000
Grants - SENDIT	876,000
Grants - geographic education	50,000
Total all funds	<u>\$712,092,723</u>
Less estimated income	<u>187,229,971</u>
Total general fund appropriation	<u>\$524,862,752</u>

Subdivision 2.

STATE LIBRARY

Salaries and wages	\$ 1,958,201
Operating expenses	1,041,033
Equipment	22,500
Grants	1,135,521
Total all funds	<u>\$ 4,157,255</u>

Less estimated income	1,355,562
Total general fund appropriation	\$ 2,801,693

Subdivision 3.

SCHOOL FOR THE DEAF

Salaries and wages	\$ 4,064,385
Operating expenses	913,958
Equipment	100,000
Capital improvements	25,000
Total all funds	\$ 5,103,343
Less estimated income	531,878
Total general fund appropriation	\$ 4,571,465

Subdivision 4.

SCHOOL FOR THE BLIND

Salaries and wages	\$ 2,177,856
Operating expenses	652,154
Equipment	81,900
Capital improvements	394,075
Total all funds	\$ 3,305,985
Less estimated income	957,067
Total general fund appropriation	\$ 2,348,918
Grand total general fund appropriation H.B. 1013	\$534,584,828
Grand total special funds appropriation H.B. 1013	\$190,074,478
Grand total all funds appropriation H.B. 1013	\$724,659,306

SECTION 2. LEGISLATIVE INTENT - TUITION APPORTIONMENT.

It is the intent of the legislative assembly that the sum of \$49,273,144, or such greater or lesser sums as become available, included in the grants-tuition apportionment and estimated income line items in subdivision 1 of section 1 of this Act, be distributed by the office of management and budget out of any moneys in the state tuition fund in the state treasury to the public schools of this state as provided in section 2 of article IX of the Constitution of North Dakota and chapter 15-44 for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 3. LEGISLATIVE INTENT - EXPENDITURE AUTHORITY.

The superintendent of public instruction may expend funds appropriated in the foundation aid and transportation and special education grants line items in subdivision 1 of section 1 of this Act in payment of grants for education services that were due in the 1995-97 biennium but which were not filed, claimed, or properly supported by the education provider in question until after June 30, 1997.

SECTION 4. LEGISLATIVE INTENT - DISTRIBUTION OF SPECIAL EDUCATION AID. It is the intent of the legislative assembly that the amount included in the grants - special education line item in subdivision 1 of section 1 of this Act be distributed as follows:

1. Ten million dollars to reimburse school districts or special education units for excess costs incurred relating to contracts for students with disabilities as required in sections 15-40.2-08, 15-59-06, and 15-59-07, and for boarding care reimbursements as required in section 15-59-07.2.
2. Four hundred thousand dollars to reimburse school districts or special education units for gifted and talented programs upon the submission of an application that is approved in accordance with guidelines adopted by the superintendent of public instruction. The superintendent of public

instruction shall encourage cooperative efforts for gifted and talented programs among school districts and special education units.

3. Any amount remaining in the line item must be distributed on a per student basis as required by section 15-40.1-07.6, except that during each of the school years of the biennium a school district or special education unit may not receive less than ninety percent of the amount received during the 1993-94 school year from state special education funds, excluding reimbursements for student contracts, boarding care, and gifted and talented programs. State special education payments distributed as required by section 15-40.1-07.6 must be reduced by the amount of matching funds required to be paid by school districts or special education units for students participating in the medicaid program. Special education funds equal to the amount of the matching funds required to be paid by the school district or special education unit must be paid by the superintendent of public instruction to the department of human services on behalf of the district or unit.

SECTION 5. LEGISLATIVE INTENT - GRANTS FOR SENDIT. It is the intent of the fifty-fifth legislative assembly that the funds appropriated in subdivision 1 of section 1 of this Act for grants to the SENDIT network be distributed by the educational telecommunications council to support the electronic connectivity and networking of schools through the SENDIT network.

SECTION 6. LEGISLATIVE INTENT - TECHNOLOGY REIMBURSEMENT PAYMENTS. It is the intent of the fifty-fifth legislative assembly that the funds appropriated in subdivision 1 of section 1 of this Act for technology reimbursement payments be used for reimbursing school districts for technology-related expenditures. The educational telecommunications council shall determine the maximum amount to which each school district is entitled by dividing the number of elementary and secondary students in average daily membership in this state into the funds appropriated in subdivision 1 of section 1 of this Act for technology reimbursement payments and then multiplying the result by the number of students in average daily membership in each district. Upon receiving substantiating documentation from a school district indicating the expenditure of funds on or after July 1, 1996, for the acquisition of computer technology for student uses or instructional purposes, interactive television, or teacher inservice programs related to the use of computer technology in classroom instruction, the educational telecommunications council shall provide reimbursement to the school district in an amount equal to that expended but not exceeding that to which the school district is entitled.

SECTION 7. LEGISLATIVE INTENT - MEAT IN SCHOOL LUNCH PROGRAMS. It is the intent of the fifty-fifth legislative assembly that the superintendent of public instruction encourage school boards operating or providing for the operation of child nutrition and food distribution programs in schools to not offer yogurt as a substitute for meat in school lunches served to students.

SECTION 8. LEGISLATIVE INTENT - DIVISION OF INDEPENDENT STUDY TUITION RATES. It is the intent of the fifty-fifth legislative assembly that during the 1997-99 biennium, the division of independent study review the tuition rates charged for resident and nonresident students enrolled in independent study courses and consider increasing the tuition rate charged nonresident students.

SECTION 9. LEGISLATIVE INTENT - POSITION TRANSFERS. It is the intent of the fifty-fifth legislative assembly that for the 1997-99 biennium, the

department of public instruction be authorized to have no more than 135.45 full-time equivalent positions and that no more than 39.2 of these positions be in the division of independent study. It is the intent of the fifty-fifth legislative assembly that if, during the 1997-99 biennium, the superintendent of public instruction transfers any positions to the division of independent study from other divisions of the department of public instruction, the transfers be reported to the budget section of the legislative council at its next meeting.

SECTION 10. LEGISLATIVE INTENT - GRANT TO LEADERSHIP IN EDUCATION ADMINISTRATION CONSORTIUM - REPORT TO LEGISLATIVE COUNCIL COMMITTEE. It is the intent of the fifty-fifth legislative assembly that \$25,000 of the amount appropriated in the grants - other grants line item in subdivision 1 of section 1 of this Act be used to provide a grant to the leadership in education administration consortium to develop training programs in cooperation with teacher learning centers. It is the intent of the fifty-fifth legislative assembly that the leadership in education administration consortium and the teacher learning centers work cooperatively to develop training programs for teachers and education administrators. The leadership in education administration consortium shall present, no later than September 30, 1998, a report to the legislative council or its designated committee on training programs for teachers and education administrators developed in cooperation with the teacher learning centers.

SECTION 11. PAYMENTS FOR LIMITED ENGLISH PROFICIENT STUDENTS. Notwithstanding section 2 of Senate Bill No. 2029 as passed by the fifty-fifth legislative assembly, payments to school districts educating limited English proficient students, as provided by that bill, must be paid from up to \$300,000 of the amount appropriated in subdivision 1 of section 1 of this Act for grants - foundation aid and transportation.

SECTION 12. CREDENTIALING PROCESS FOR SPECIAL EDUCATION TEACHERS. The superintendent of public instruction may not change the credentialing process for special education teachers as it is in effect on March 1, 1997, without first convening a meeting to include representatives of the council of educational leaders, the council for exceptional children, the North Dakota education association, and the North Dakota school boards association. The purpose of the meeting is to receive comments regarding the proposed changes, including the scheduling and manner of implementation, associated costs, the applicability of the proposed changes, and the short-term and long-term effects of the proposed changes. If, within thirty days after the date of the meeting, any representative present at the meeting objects in writing to the proposed change, the superintendent may not implement the change prior to July 1, 1999.

SECTION 13. FEDERAL FUNDING FOR SPECIAL EDUCATION. The legislative assembly urges Congress to fund the education of children with disabilities at the level authorized in the Education for All Handicapped Children Act of 1975. In that legislation, now known as the Individuals with Disabilities Education Act, Congress included a graduated formula for determining state entitlement and provided that for the fiscal year ending September 30, 1982, and for each fiscal year thereafter, the federal funding level was to be set at forty percent of the average per student expenditure in public elementary and secondary schools in the United States. Because the level of federal funding received by this state has never exceeded ten percent, this federal legislation constitutes an underfunded mandate. The secretary of state shall forward copies of this section to the secretary of the department of education, to the chairman of the senate labor and human resources committee, to the chairman of the house economic and educational opportunities committee, and to each member of the North Dakota congressional delegation.

SECTION 14. GOALS 2000 - PARTICIPATION VOLUNTARY. The school board of any school district may, on behalf of the district it represents, choose to participate or not to participate in Goals 2000 Educate America Act [Pub. L. 103-227; 108 Stat. 125; 20 U.S.C. 5801 et seq.]. Any school board that chooses to participate and directly or indirectly receives federal funds for its participation shall expend such funds in the manner it determines best meets the goal of educational enhancement in the school district, in accordance with the district's locally developed goals 2000 educational improvement application plan. The superintendent of public instruction may not impose any financial penalty or other sanction on a school or school district if the school board chooses, at any time, to terminate participation in goals 2000.

SECTION 15. School-to-work - Student participation voluntary. Before any elementary or secondary school student may participate in any course, program, or project offered under the auspices of the School-to-Work Opportunities Act of 1994, [Pub. L. 103-239; 108 Stat. 568; 20 U.S.C. 2394 et seq.], the student's school principal shall obtain the written consent of the student's parent or legal guardian. Participation by a student is voluntary and may not be deemed a condition of graduation. Neither school personnel, school district personnel, nor the superintendent of public instruction may impose any academic penalties or any other sanctions on a student for failure to participate. A student's participation in a course, program, or project offered under the auspices of the School-to-Work Opportunities Act of 1994 is subject to all state and federal child labor laws.

SECTION 16. DISPLACED HOMEMAKER FUND. The amount of \$250,000, or so much of the sum as may be necessary, included in the estimated income line item in subdivision 1 of section 1 of this Act is from the displaced homemaker fund for the purpose of providing services for displaced homemakers as provided in chapter 14-06.1 for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 17. GRANTS. The line item entitled grants in subdivision 2 of section 1 of this Act includes \$935,521 for aid to public libraries of which no more than one-half is to be expended during the fiscal year ending June 30, 1998.

SECTION 18. FEES DEPOSITED IN OPERATING FUND. Any moneys included in estimated income in subdivision 4 of section 1 of this Act, collected for subscription fees or braille fees, must be deposited in the school for the blind operating fund in the state treasury and must be spent subject to appropriation by the legislative assembly.

SECTION 19. AMENDMENT. Section 15-21-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-21-02. Salary and traveling expenses. The annual salary of the superintendent of public instruction is ~~fifty-three~~ fifty-six thousand ~~eight~~ five hundred ~~forty-eight~~ sixty-eight dollars through June 30, ~~1996~~ 1998, and ~~fifty-four~~ fifty-eight thousand ~~nine~~ two hundred ~~twenty-five~~ seventy-two dollars thereafter. The superintendent is also entitled to reimbursement for expenses incurred in the discharge of official duties, such expenses to be paid monthly on a warrant prepared by the office of management and budget and signed by the state auditor, upon the filing of an itemized and verified statement of expenses.

SECTION 20. A new section to chapter 15-34.1 of the North Dakota Century Code is created and enacted as follows:

Children with autism - Home school. Notwithstanding any other law, a parent or legal guardian may provide home schooling to a developmentally disabled child with autism if:

1. The child has been determined to be autistic by a licensed psychologist;
2. The child's parent or legal guardian qualifies to provide home schooling under section 15-34.1-06;
3. The child's parent or legal guardian files with the superintendent of the child's school district of residence:
 - a. A notice that the child will be home schooled;
 - b. A copy of the child's diagnosis of autism prepared and attested to by a licensed psychologist; and
 - c. A description of the instructional plan to be followed during the school year, together with an attestation by a licensed psychologist and a North Dakota certified teacher that the instructional plan is appropriate for the child.

SECTION 21. A new section to chapter 15-34.1 of the North Dakota Century Code is created and enacted as follows:

Children with autism - Home school - Progress reports.

1. On or before November first, February first, and May first of each school year, a parent providing home schooling to an autistic child under section 20 of this Act shall file with the superintendent of the child's school district of residence progress reports prepared by a licensed psychologist, an occupational therapist, a speech pathologist, and a certified teacher. If at any time the licensed psychologist, the occupational therapist, the speech pathologist, and the certified teacher agree that adequate progress is not being made, they shall notify the superintendent of the child's school district of residence and request that the child be evaluated by a multidisciplinary team.
2. The superintendent of the child's school district of residence shall forward copies of all documentation required by this section to the superintendent of public instruction. The superintendent of public instruction shall provide a report and recommendations regarding the home schooling of developmentally disabled children with autism under this section and section 20 of this Act to the legislative council.

³ **SECTION 22. AMENDMENT.** Section 25-01-03 of the North Dakota Century Code is amended and reenacted as follows:

25-01-03. Supervising officer to appoint superintendent of institutions - Salaries - Removal.

³ Section 25-01-03 was also amended by section 1 of Senate Bill No. 2149, chapter 241.

1. The supervising officer shall appoint a superintendent for each of the institutions under its control, except for the state hospital, where the supervising officer shall appoint a superintendent and a medical director in consultation with a state hospital governing body.
2. The tenure of office of each superintendent is two years from the date of the superintendent's appointment, and the superintendent must possess qualifications required by this title. Any superintendent may be removed by the supervising officer for misconduct, neglect of duty, incompetency, or other proper cause showing the superintendent's inability or refusal properly to perform the duties of office, but a removal at a time other than a termination of the superintendent's two-year tenure may be had only after an opportunity is given to the person to be heard before a board consisting of the governor, attorney general, and supervising officer of the institution on preferred written charges. A removal when made, however, is final. This subsection does not apply to the superintendent of the school for the blind or the superintendent of the school for the deaf, whose positions are included in the classified service as provided in section 54-44.3-20.
3. The supervising officer shall fix the compensation of each superintendent within the limits prescribed in this title and within the appropriations made by the legislative assembly for compensation.

SECTION 23. AMENDMENT. Section 54-24-01 of the North Dakota Century Code is amended and reenacted as follows:

54-24-01. State library - State librarian appointed by the superintendent of public instruction. The superintendent of public instruction shall appoint an executive officer to be known as the state librarian, who shall report to the superintendent and must receive a salary within the amount appropriated for salaries by the legislative assembly. The state librarian shall control the work and is the director of the state library. The position of state librarian is included in the classified service, as provided in section 54-44.3-20. The state library is an autonomous agency and retains a budget and staff separate from that of the superintendent of public instruction.

SECTION 24. AMENDMENT. Subsection 3 of section 54-44.3-20 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Administrative heads of departments required by law, other than the superintendent of the school for the blind, the superintendent of the school for the deaf, and the state librarian.

SECTION 25. EXPIRATION DATE. Sections 20 and 21 of this Act are effective through June 30, 1999, and after that date are ineffective.

Approved April 14, 1997
Filed April 14, 1997

CHAPTER 14

HOUSE BILL NO. 1014 (Appropriations Committee) (At the request of the Governor)

COMMITTEE ON PROTECTION AND ADVOCACY

AN ACT to provide an appropriation for defraying the expenses of the committee on protection and advocacy; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds, to the committee on protection and advocacy for the purpose of defraying the expenses of protection and advocacy services, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Total all funds	\$2,107,834
Less estimated income	<u>1,410,787</u>
Total general fund appropriation	\$ 697,047

SECTION 2. LEGISLATIVE COUNCIL STUDY - PROTECTION AND ADVOCACY EFFICIENCIES. If the legislative council studies the merging of advocacy programs pursuant to Senate Concurrent Resolution No. 4038 during the 1997-98 interim, the study should include a review of the feasibility and potential savings of the protection and advocacy committee sharing office space or staff with other state agencies.

Approved April 11, 1997
Filed April 11, 1997

CHAPTER 15

HOUSE BILL NO. 1015

(Appropriations Committee)
(At the request of the Governor)

OFFICE OF MANAGEMENT AND BUDGET

AN ACT to provide an appropriation for defraying the expenses of the various divisions under the supervision of the director of the office of management and budget; to provide an appropriation for defraying the expenses of the department of human services and the state auditor; to provide for various transfers and financial transactions; to provide an exemption from the provisions of section 54-44.1-11 of the North Dakota Century Code; to provide a statement of legislative intent relating to state employee compensation adjustments; to authorize transfer of various special funds to the general fund; to provide for mobile data terminals; to provide directives relating to 911 telephone services; to provide for program reductions if federal programs are terminated or reduced; to provide for a transfer from the North Dakota insurance reserve fund to the office of management and budget; to provide for a transfer from the information services division operating fund to the state general fund; to provide for legislative council studies of public employee health insurance benefits and telemedicine; to provide for a transfer from the budget stabilization fund to the Bank of North Dakota; to provide for transfers from the Bank of North Dakota to the state general fund; to provide for a transfer from the North Dakota mill and elevator association to the state general fund; to amend and reenact sections 26.1-23.1-05, 32-12.2-06, 54-27.2-02, and 54-40-01 of the North Dakota Century Code, relating to government self-insurance pool investments, the state risk management fund, the budget stabilization fund and the exercise of joint authority by North Dakota and South Dakota; to repeal section 5 of Senate Bill No. 2012 as approved by the 1997 legislative assembly, relating to street expenditures; to provide for application; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the various divisions under the supervision of the director of the office of management and budget for the purpose of defraying their expenses, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Subdivision 1.

OFFICE OF MANAGEMENT AND BUDGET

Administration	\$ 3,366,327
Fiscal management	4,066,236
Facility management	8,340,852
Central personnel	1,126,728
Intergovernmental assistance	39,503,256
Risk management	1,094,360
Total all funds	\$57,497,759

Less estimated income	<u>42,246,762</u>
Total general fund appropriation	\$ 15,250,997

Subdivision 2.

INFORMATION SERVICES DIVISION

Information resource management	<u>\$ 45,326,741</u>
Total special funds appropriation	\$ 45,326,741

Subdivision 3.

CENTRAL SERVICES

Central services	<u>\$ 4,638,793</u>
Total all funds	\$ 4,638,793
Less estimated income	<u>4,240,786</u>
Total general fund appropriation	\$ 398,007

Subdivision 4.

STATE RADIO COMMUNICATIONS

Salaries and wages	\$ 2,347,426
Operating expenses	1,741,249
Equipment	<u>613,201</u>
Total all funds	\$ 4,701,876
Less estimated income	<u>586,610</u>
Total general fund appropriation	\$ 4,115,266
Grand total general fund appropriation	\$ 19,764,270
Grand total special funds appropriation	\$ 92,900,899
Grand total all funds appropriation	\$112,665,169

SECTION 2. DEPARTMENT OF HUMAN SERVICES PERFORMANCE

AUDIT - APPROPRIATION. The department of human services shall include, in any plans submitted to implement the federal temporary assistance for needy families (TANF) program, a request for or for the use of federal funds to be used for a performance audit of the state's implementation of welfare reform. If the additional federal funds become available for this purpose, the department of human services shall contract with the state auditor for the completion of the performance audit. The state auditor may employ up to three additional auditors for this purpose or may contract with an independent audit firm for the completion of the performance audit. There is hereby appropriated to the department of human services up to \$250,000 of federal funds for the biennium beginning July 1, 1997, and ending June 30, 1999, to be used to contract with the state auditor for the completion of a performance audit. There is hereby appropriated to the state auditor's office up to \$250,000 of federal funds for the biennium beginning July 1, 1997, and ending June 30, 1999, to be received from the department of human services for the completion of a performance audit of the department.

SECTION 3. ADDITIONAL INCOME. All income in excess of estimated income in the budget appropriated by the legislative assembly to the office of management and budget for the biennium beginning July 1, 1997, and ending June 30, 1999, must be deposited in the appropriate operating funds in the state treasury and may only be expended with the authorization of the emergency commission. Income exceeding \$50,000 must be approved by the budget section.

SECTION 4. LINE ITEM TRANSFERS. Upon approval of the emergency commission, the director of the office of management and budget may transfer between various line items in subdivisions 1, 2, and 3 of section 1 of this Act appropriation authority of up to ten percent of a given line item to adjust for

changing circumstances in meeting established performance measures. Any further transfers must be approved by the budget section.

SECTION 5. CAPITOL BUILDING FUND. The amount of \$605,850, or so much of the sum as is necessary, included in the estimated income line item in subdivision 1 of section 1 of this Act, is to be spent by the facility management division from the capitol building fund during the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 6. EXEMPTION. The fiscal management appropriation contained in subdivision 1 of section 1 of chapter 37 of the 1995 Session Laws is not subject to the provisions of section 54-44.1-11 for up to an amount of \$800,000 and any unexpended funds from this appropriation are available for continued development and operating costs of the accounting, management, and payroll systems during the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 7. INTENT - STATE EMPLOYEE COMPENSATION ADJUSTMENTS - GUIDELINES. It is the intent of the fifty-fifth legislative assembly that 1997-99 compensation adjustments for permanent state employees are to be increases providing an average of three percent with a minimum of \$30 per month, beginning with the month of July 1997, to be paid in August 1997, and providing an average of three percent with a minimum of \$30 per month, beginning with the month of July 1998, to be paid in August 1998. Any increases greater than \$30 per month must be based on merit and equity.

Probationary employees and employees whose documented performance levels do not meet standards are not eligible for the general or additional increases.

During the biennium, no salary increase other than the \$30 per month in July 1997 and the \$30 per month in July 1998 may be given to an employee whose salary exceeds or would exceed the salary range maximum.

It is the intent of the fifty-fifth legislative assembly that the workers compensation bureau receive its 1997-99 employee compensation adjustment in a lump sum amount of \$508,406 to provide pay raises based on merit and performance throughout the 1997-99 biennium.

SECTION 8. INTENT. Within the authority included in subdivision 1 of section 1 of this Act, are the following grants and special items:

Boys and girls clubworks	\$	53,000
State contingencies		500,000
State memberships and related expenses		307,500
Firemen's association		63,000
Unemployment insurance		2,000,000
Capitol grounds planning commission		25,000

SECTION 9. TRANSFER. During the biennium beginning July 1, 1997, and ending June 30, 1999, the director of the office of management and budget is authorized to transfer special funds to the general fund as follows:

Lands and minerals trust fund	\$	5,500,000
State aid distribution fund		29,594,725

SECTION 10. FIRE AND TORNADO FUND. The amount of \$63,000, or so much of the amount as is necessary, included in the estimated income line item in subdivision 1 of section 1 of this Act, is from the fire and tornado fund.

SECTION 11. MOBILE DATA TERMINALS. Of the amounts included in the operating and equipment line items in subdivision 4 of section 1 of this Act, \$266,180 and \$573,201, respectively, provide for radio tower upgrades for mobile data terminals. These funds may not be expended prior to the completion of the mobile data communications plan provided for in the highway patrol appropriation.

SECTION 12. STATE RADIO - 911 SERVICES. As required by section 18 of 1995 Senate Bill No. 2015, the fifty-fifth legislative assembly specifically provides state radio communications with the authority to expand its 911 services beyond the twenty-county limit set by the fifty-fourth legislative assembly. The authority to add Golden Valley and Divide counties to its 911 service begins with the effective date of this Act and ends on June 30, 1999. State radio communications is then limited to providing 911 services to the counties being served as of June 30, 1999.

SECTION 13. FEDERAL PROGRAM TERMINATIONS - BLOCK GRANT - FUNDING REDUCTIONS - RELATED PROGRAM REDUCTIONS - REPORTS TO THE BUDGET SECTION. If the federal government during the 1997-99 biennium terminates funding for any program administered by an agency, department, or institution of the state of North Dakota, the agency, department, or institution, subject to budget section approval, may terminate the program and not replace the reduction in federal funds with state funds, notwithstanding any other provision of law. If the federal government combines funding for separate programs in a block grant resulting in a reduction of total federal funds available for those programs, the administering agency, department, or institution may, subject to budget section approval, prioritize or reprioritize programs as necessary in making programmatic reductions. The agency, department, or institution may administer funds available under a new federal block grant or similar measure, consistent with the terms of that measure, notwithstanding any other provisions of law intended to conform to or implement the provisions of the repealed federal Act, and shall report any program terminations, reductions, or changes resulting from this section to the budget section of the legislative council for its approval.

SECTION 14. RISK MANAGEMENT. The North Dakota insurance reserve fund shall transfer \$2,100,000 of surplus on July 1, 1997, and \$2,100,000 on July 1, 1998, to the office of management and budget. This transfer represents final settlement with the North Dakota insurance reserve fund for any claim by the state to any funds held by the North Dakota insurance reserve fund, except for contractual obligations pursuant to the terms of any memorandum of coverage issued by the North Dakota insurance reserve fund to a state agency.

The recovery of the \$4,200,000, together with current reserves in the risk management fund and the contributions required from agencies or other governmental units not receiving a specific appropriation and boards and commissions, are considered sufficient reserves for claims anticipated in the 1997-99 biennium.

SECTION 15. TRANSFER. The director of the office of management and budget shall transfer \$150,000, or an amount equal to the 1997-99 biennium costs relating to the information technology management division of the legislative council, whichever is less, from the information services operating fund to the general fund during the biennium beginning July 1, 1997, and ending June 30, 1999. The transfer

is to reimburse the general fund for costs relating to information technology research, planning, monitoring, reviewing, and auditing and for assistance provided to agencies by the information technology management division of the legislative council.

SECTION 16. SALE OF HIGHWAY PATROL AIRPLANE.

Notwithstanding any other provision of law, the North Dakota highway patrol may use within the limits of legislative appropriation the proceeds from the sale of one of its airplanes for the comprehensive public communications plan.

SECTION 17. LEGISLATIVE INTENT - STATE EMPLOYEE SALARY

REPORT. It is the intent of the fifty-fifth legislative assembly that during the 1997-98 interim the office of management and budget report to an interim legislative council committee on state employee compensation issues. The report should focus on compression problems, market comparisons, and other compensation issues to include the effects of all benefits, including health insurance, on the employment relationship. The report is to include detailed information on the impact of salary compression and estimates of the dollar amount to correct salary compression problems. In addition, the office of management and budget is also to develop and present a plan to compensate state employees in a fair and adequate manner.

SECTION 18. LEGISLATIVE INTENT - STATE EMPLOYEE BENEFIT

SALARY REPORT. It is the intent of the fifty-fifth legislative assembly that during the 1997-98 interim the office of management and budget and the public employees retirement system report to the legislative interim employee benefits programs committee on pension portability. The report should focus on issues of pension portability and how to balance the needs of long- and short-term employees within defined benefit or defined contribution plan concepts.

SECTION 19. LEGISLATIVE COUNCIL INTERIM STUDY OF PUBLIC

EMPLOYEE HEALTH INSURANCE BENEFITS. The legislative council shall consider studying public employee health insurance benefits during the 1997-98 interim. If conducted, the study must include a comparison of the cost of participating in exclusive provider organizations and preferred provider organizations as compared to participating in the standard indemnity plan; the extent to which members of the uniform group insurance program are now participating in exclusive provider organizations and preferred provider organizations; the number of public employees who are unable to participate in a preferred provider organization or exclusive provider organization because of geographical considerations; an analysis of any cost savings if up to all participants exercise the exclusive provider organization or preferred provider organization option; and methods by which the public employees retirement system board could encourage members of the public employees retirement system uniform group insurance program to participate in exclusive provider organizations and preferred provider organizations. The study must include an analysis of general fund savings that may be realized if an additional copayment is required of all members not participating in an exclusive provider organization or preferred provider organization and an analysis of general fund savings that may be realized if members of the uniform group insurance program were permitted to participate in health maintenance organizations where such organizations are available. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-sixth legislative assembly.

SECTION 20. LEGISLATIVE COUNCIL STUDY OF TELEMEDICINE.

The legislative council shall consider studying, during the 1997-98 interim, the

utilization of telemedicine in this and other states, and the desirability of adopting any amendments to the professional licensing laws and other laws that will facilitate the development of telemedicine while preserving the quality of health care. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-sixth legislative assembly.

SECTION 21. BUDGET STABILIZATION FUND TRANSFER TO BANK OF NORTH DAKOTA. The director of the office of management and budget shall transfer any amounts in or to be transferred as of July 1, 1997, to the budget stabilization fund, to the Bank of North Dakota. Any amount transferred to the Bank shall become a part of the Bank's undivided profits.

SECTION 22. BANK OF NORTH DAKOTA TRANSFERS TO STATE GENERAL FUND. During the biennium ending June 30, 1999, the industrial commission shall transfer to the state general fund up to \$29,600,000 from the current earnings of the Bank of North Dakota. The moneys shall be transferred in amounts and at such times as requested by the director of the office of management and budget.

No transfers may be made which would reduce the Bank's capital structure below \$100,000,000.

SECTION 23. CONTINGENT BANK OF NORTH DAKOTA TRANSFERS TO STATE GENERAL FUND. If, during the biennium ending June 30, 1999, the director of the office of management and budget determines via revised projections that general fund revenue collections will not meet the revenues as forecast in the March 1997 legislative forecast, then the industrial commission shall transfer to the state general fund an additional amount, as determined by the director of the office of management and budget and as approved by the budget section, from the earnings and accumulated and undivided profits of the Bank of North Dakota. The moneys must be transferred in amounts and at such times as requested by the director of the office of management and budget. The additional amount transferred may not exceed the lesser of \$23,000,000 or the revenue shortfall of actual collections compared to the March 1997 legislative forecast.

No transfers may be made which would reduce the Bank's capital structure below \$100,000,000.

SECTION 24. LEGISLATIVE INTENT - ADDITIONAL STATE AGENCY TURNBACK. It is the intent of the fifty-fifth legislative assembly that the 1995-97 and 1997-99 biennium revenue forecasts as adopted by the budget section on March 12, 1997, be adjusted to include additional funds resulting from unspent 1995-97 appropriation authority of \$1,700,000 as follows: department of human services \$1,500,000; health department \$100,000; and department of economic development and finance \$100,000.

SECTION 25. UNIVERSITY SYSTEM SALARY INITIATIVE. Funding of \$3,200,000 appropriated for the university system salary initiative in the salaries and wages line item in subdivision 1 of section 1 of Senate Bill No. 2003, as approved by the fifty-fifth legislative assembly, must be used by the North Dakota university system for the benefit of the institutions and entities under the jurisdiction of the North Dakota university system, including its institutions of higher learning, the North Dakota state university extension service, the northern crops institute, the upper great plains transportation institute, and the entities of the North Dakota agricultural experiment station.

SECTION 26. HIGHER EDUCATION INTERNAL SERVICE FUND TRANSFERS - BUDGET SECTION APPROVAL. All institutions under the authority of the board of higher education must receive approval from the budget section to expend or transfer amounts greater than \$50,000 from the accumulated moneys in internal service funds except for (1) mandatory transfers for servicing related debt; and (2) routine operating expenditures associated with the funds.

SECTION 27. TRANSFER. In addition to the \$2,000,000 transfer provided for in section 9 of Senate Bill No. 2015, as passed by the fifty-fifth legislative assembly, the industrial commission shall transfer to the general fund in the state treasury the sum of \$1,000,000 from the North Dakota mill and elevator association. The moneys must be transferred in amounts and at such times as requested by the director of the office of management and budget during the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 28. TRIBAL COMMUNITY COLLEGE IVN GRANTS - VIRTUAL UNIVERSITY. The state board of higher education shall use the moneys appropriated in the tribal community college IVN grants line item in subdivision 2 of section 1 of Senate Bill No. 2003, as passed by the fifty-fifth legislative assembly, for a grant for the western governors' association virtual university project.

SECTION 29. LEGISLATIVE INTENT - ADDITIONAL OIL AND GAS PRODUCTION TAX REVENUE. It is the intent of the fifty-fifth legislative assembly that the 1997-99 biennium revenue forecast as adopted by the budget section on March 12, 1997, be adjusted to include additional oil and gas production tax revenues of \$1,416,730.

SECTION 30. AMENDMENT. Section 26.1-23.1-05 of the North Dakota Century Code is amended and reenacted as follows:

26.1-23.1-05. Investment of assets - Subsidiary insurance company coverage. A government self-insurance pool may only invest its funds and accumulations in those investments described in ~~section~~ sections 26.1-05-19 and 26.1-10-02. If a government self-insurance pool investment is made under section 26.1-10-02, a resulting subsidiary insurance company may not write insurance coverage for:

1. North Dakota governmental entities which competes with coverage offered by the fire and tornado fund under chapter 26.1-22 as that chapter existed on December 31, 1988;
2. Individuals;
3. For-profit organizations;
4. Nonprofit hospitals, clinics, nursing homes, churches, fraternal organizations, or organizations not performing quasi-governmental functions; or
5. Agricultural business cooperatives.

SECTION 31. AMENDMENT. Section 32-12.2-06 of the North Dakota Century Code is amended and reenacted as follows:

32-12.2-06. (~~Contingent expiration date - see Note~~) Liability insurance - Reinsurance. Upon approval of the director of the office of management and

budget, an entity of the state may participate in a government self-insurance pool or may purchase insurance against liability of the entity and its employees for damages resulting from claims under this chapter. The director shall limit participation in government self-insurance pools and, except as provided in this section, the purchase of insurance to exposures determined to cause an excessive financial risk to the state risk management fund including exposures reasonably expected to deplete the fund and have a significant detrimental impact on the state's budget. The director shall develop a state self-retention program that provides as much coverage as possible of potential liability recognized by this chapter, but that includes insurance purchases in a manner that is determined appropriate by the director in consultation with the state risk manager. The insurance may be provided by an insurance company authorized to do business in this state which the commissioner of insurance has determined to be responsible and financially sound, considering the extent of the coverage required, or coverage may be provided by a government self-insurance pool. If a premium savings will result and the director of the office of management and budget approves, the insurance policy or memorandum of coverage may be in force from one through three years from the date of issue. The director may procure an excess loss reinsurance contract for the state.

SECTION 32. AMENDMENT. Section 54-27.2-02 of the North Dakota Century Code is amended and reenacted as follows:

54-27.2-02. ~~(Effective until June 30, 1997)~~ Certain general fund revenues to be deposited in the budget stabilization fund. Notwithstanding any other provision of law except section 54-27.2-01, any amount in the state general fund in excess of ~~seventy sixty-five~~ million dollars at the end of any biennium must be transferred by the state treasurer to the budget stabilization fund. For purposes of this section, "at the end of any biennium" means after cancellation of unexpended appropriations under section 54-44.1-11.

~~(Effective June 30, 1997) Certain general fund revenues to be deposited in the budget stabilization fund.~~ Notwithstanding any other provision of law except section ~~54-27.2-01~~, any amount in the state general fund in excess of forty million dollars at the end of any biennium must be transferred by the state treasurer to the budget stabilization fund. ~~For purposes of this section, "at the end of any biennium" means after cancellation of unexpended appropriations under section 54-44.1-11.~~

⁴ **SECTION 33. AMENDMENT.** Section 54-40-01 of the North Dakota Century Code is amended and reenacted as follows:

54-40-01. Agreement - Exercise of joint powers - Bonds.

1. Two or more governmental units or municipal corporations having in common any portion of their territory or boundary, by agreement entered into through action of their governing bodies, may jointly or cooperatively exercise their respective separate powers, or any power common to the contracting parties or any similar powers, including those which are the same except for the territorial limits within which they may be exercised for the purpose of acquiring, constructing, and maintaining any building for their joint use. The term "governmental

⁴ Section 54-40-01 was also amended by section 1 of Senate Bill No. 2048, chapter 548.

unit" as used in this section includes and means every city, county, town, park district, school district, states and United States governments and departments of each thereof, and all other political subdivisions even though not specifically named or referred to herein.

2. Two or more counties or cities, or any combination of counties or cities, whether or not they have in common any portion of their territory or boundary, by agreement entered into through action of their governing bodies, may jointly or cooperatively exercise their respective separate powers, or any power common to the contracting parties or any similar powers, for the purpose of acquiring equipment or constructing roads, bridges, and road and bridge improvements.
3. An agency, department, or institution of this state may enter an agreement with the state of South Dakota to form a bistate authority to jointly exercise any function that the entity is authorized by law to perform. Any agreement entered under this subsection must be submitted to the legislative assembly or, if the legislative assembly is not in session, to the legislative council or a committee designated by the legislative council for approval or rejection and may not become effective until approved by the legislative assembly or the legislative council.
4. Counties or cities, or any combination of counties or cities, may jointly issue bonds in the same manner and for the purposes provided for in chapter 21-03.

SECTION 34. REPEAL. Section 5 of Senate Bill No. 2012 as approved by the 1997 Legislative Assembly is repealed.

SECTION 35. APPLICATION. North Dakota Century Code sections 54-16-04 and 54-44.1-11 do not apply to chapter 1 of the 1995 Session Laws.

SECTION 36. EXPIRATION DATE. Section 32 of this Act is effective through June 30, 1999, and after that date is ineffective.

SECTION 37. EMERGENCY. Section 32 of this Act is declared to be an emergency measure.

Approved April 24, 1997
Filed April 24, 1997

NOTE: Section 15 was vetoed by the Governor, see chapter 556.

CHAPTER 16

HOUSE BILL NO. 1016 (Appropriations Committee) (At the request of the Governor)

EMERGENCY MANAGEMENT

AN ACT to provide an appropriation for defraying the expenses of the division of emergency management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the division of emergency management under the supervision of the adjutant general for the purpose of defraying its expenses, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Salaries and wages	\$ 1,836,756
Operating expenses	1,067,062
Equipment	154,910
Grants	<u>12,838,000</u>
Total all funds	\$15,896,728
Less estimated income	<u>15,597,093</u>
Total general fund appropriation	\$ 299,635

SECTION 2. STATE HAZARDOUS MATERIAL PREPAREDNESS AND RESPONSE FUND. The estimated income line item in section 1 of this Act includes \$324,991 from the state hazardous material preparedness and response fund for the biennium beginning July 1, 1997, and ending June 30, 1999.

Approved April 3, 1997
Filed April 3, 1997

CHAPTER 17

HOUSE BILL NO. 1017

(Appropriations Committee)
(At the request of the Governor)

ADJUTANT GENERAL

AN ACT to provide an appropriation for defraying the expenses of the adjutant general.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the adjutant general's office for the purpose of defraying the expenses of the adjutant general's office, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Salaries and wages	\$ 2,855,065
Operating expenses	2,650,601
Equipment	50,000
Capital improvements	27,500
Grants	366,538
Army guard contract	8,658,017
Tuition and enlistment compensation	1,096,000
Air guard contract	5,062,635
Civil air patrol	92,822
Civil air patrol - workers' compensation payment	<u>9,186</u>
Total all funds	\$20,868,364
Less estimated income	<u>12,885,911</u>
Total general fund appropriation	\$ 7,982,453

SECTION 2. SPECIAL FUNDS. The amount of \$60,000, or so much of the amount as is necessary, included in the estimated income line item in section 1 of this Act, is to be spent from the national guard tuition trust fund for the tuition programs provided for in chapters 37-07.1 and 37-07.2 for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 3. APPROPRIATION. There is hereby appropriated any funds received by the adjutant general from federal and private sources for the purpose of operating the North Dakota veterans' cemetery at or adjacent to Fort Abraham Lincoln state park for the biennium beginning July 1, 1997, and ending June 30, 1999.

Approved April 10, 1997
Filed April 10, 1997

CHAPTER 18

HOUSE BILL NO. 1018 (Appropriations Committee) (At the request of the Governor)

HOMESTEAD TAX CREDIT

AN ACT to provide an appropriation to the tax commissioner for payment of state reimbursement under the homestead tax; to amend and reenact section 57-15-01.1 of the North Dakota Century Code, relating to property tax levy authority of taxing districts; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds or other income, to the tax commissioner for the purpose of paying the state reimbursement under the homestead tax credit, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Grants	\$4,790,813
Total all funds	\$4,790,813
Less estimated income	<u>250,000</u>
Total general fund appropriation	\$4,540,813

SECTION 2. ESTIMATED INCOME - TRANSFER. The estimated income line item in section 1 of this Act includes \$250,000 from the housing finance agency reserves. Moneys must be transferred upon order of the industrial commission to the state tax commissioner's office when it determines the transfer is necessary for the state tax commissioner to make the homestead tax credit payments.

⁵ **SECTION 3. AMENDMENT.** Section 57-15-01.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-15-01.1. (Effective for first four taxable years beginning after December 31, 1994) Protection of taxpayers and taxing districts. Each taxing district may levy the lesser of the amount in dollars as certified in the budget of the governing body, or the amount in dollars as allowed in this section, subject to the following:

1. No taxing district may levy more taxes expressed in dollars than the amounts allowed by this section.
2. For purposes of this section:

⁵ Section 57-15-01.1 was also amended by section 1 of House Bill No. 1341, chapter 486.

- a. "Base year" means the taxing district's taxable year with the highest amount levied in dollars in property taxes of the three taxable years immediately preceding the budget year, but not including any amount levied in dollars under subsection 9; and
 - b. "Budget year" means the taxing district's year for which the levy is being determined under this section.
3. A taxing district may elect to levy two percent more in taxable year 1995 and two percent more in taxable year 1996 than the amount levied in dollars in the base year and for taxable years 1997 and 1998 may elect to levy the amount levied in dollars in the base year. Any levy under this section must be specifically approved by a resolution approved by the governing body of the taxing district. Before determining the levy limitation under this section, the dollar amount levied in the base year must be:
 - a. Reduced by an amount equal to the sum determined by application of the base year's mill rate for that taxing district to the final base year taxable valuation of any property that is not included in the assessment for the budget year but was included in the assessment for the base year. However, no reduction may be made under this section due to the exemption of the personal property of railroads by enactment of House Bill No. 1396 by the fifty-fourth legislative assembly.
 - b. Increased by an amount equal to the sum determined by the application of the base year's mill rate for that taxing district to the final budget year taxable valuation of any property that was not included in the assessment for the base year but which is included in the assessment for the budget year.
 - c. Reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district.
4. A taxing district may levy an amount in dollars equal to the amount levied in any of the previous three years reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district and increased by an amount equal to the sum determined by the application of any unused mill levy authority from that year, which was authorized by law or by the electors of that taxing district but not levied for that year, to the budget year taxable valuation of the taxable property in that taxing district. A taxing district electing to increase its levy under this subsection may not add any amount permitted by subsection 3 to the amount levied under this subsection.
5. In addition to any other levy limitation factor under this section, a taxing district may increase its levy in dollars to reflect new or increased mill levies authorized by the legislative assembly or authorized by the electors of the taxing district.
6. Under this section a taxing district may supersede any applicable mill levy limitations otherwise provided by law, or a taxing district may levy up to the mill levy limitations otherwise provided by law without reference to this section, but the provisions of this section do not apply to the following:

- a. Any irrevocable tax to pay bonded indebtedness levied pursuant to section 16 of article X of the Constitution of North Dakota.
 - b. The one-mill levy for the state medical center authorized by section 10 of article X of the Constitution of North Dakota.
7. A school district choosing to determine its levy authority under this section may apply subsection 3 only to the amount in dollars levied for general fund purposes under section 57-15-14 or, if the levy in the base year included separate general fund and special fund levies under sections 57-15-14 and 57-15-14.2, the school district may apply subsection 3 to the total amount levied in dollars in the base year for both the general fund and special fund accounts. School district levies under any section other than section 57-15-14 may be made within applicable limitations but those levies are not subject to subsection 3.
 8. Optional levies under this section may be used by any city or county that has adopted a home rule charter unless the provisions of the charter supersede state laws related to property tax levy limitations.
 9. In addition to the amount otherwise determined under this section, a county, city, township, or school district eligible for federal funds on a matching basis as a result of a disaster or emergency declared by the president of the United States may levy an amount in dollars equal to the amount required to match federal funds. An additional levy under this subsection may not increase the total budget year levy under this section to more than two percent more than the amount levied by the county, city, township, or school district in the base year. Amounts levied under this subsection are not part of base year levies in dollars for purposes of future budget year calculations under this section.

(Effective for taxable years beginning after December 31, 1998) Protection of taxpayers and taxing districts. Each taxing district may levy the lesser of the amount in dollars as certified in the budget of the governing body, or the amount in dollars as allowed in this section, subject to the following:

1. No taxing district may levy more taxes expressed in dollars than the amounts allowed by this section.
2. For purposes of this section:
 - a. "Base year" means the taxing district's taxable year with the highest amount levied in dollars in property taxes of the three taxable years immediately preceding the budget year;
 - b. "Budget year" means the taxing district's year for which the levy is being determined under this section; and
 - c. "Calculated mill rate" means the mill rate that results from dividing the base year taxes levied by the sum of the taxable value of the taxable property in the base year plus the taxable value of the exempt property calculated in the same manner as the taxable property.
3. A taxing district may elect to levy the amount levied in dollars in the base year. Any levy under this section must be specifically approved by

a resolution approved by the governing body of the taxing district. Before determining the levy limitation under this section, the dollar amount levied in the base year must be:

- a. Reduced by an amount equal to the sum determined by application of the base year's calculated mill rate for that taxing district to the final base year taxable valuation of any taxable and exempt property that is not included in the taxing district for the budget year but was included in the taxing district for the base year.
 - b. Increased by an amount equal to the sum determined by the application of the base year's calculated mill rate for that taxing district to the final budget year taxable valuation of any taxable or exempt property that was not included in the taxing district for the base year but which is included in the taxing district for the budget year.
 - c. Reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district.
4. A taxing district may levy an amount in dollars equal to the amount levied in any of the previous three years reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district and increased by an amount equal to the sum determined by the application of any unused mill levy authority from that year, which was authorized by law or by the electors of that taxing district but not levied for that year, to the budget year taxable valuation of the taxable property in that taxing district. A taxing district electing to increase its levy under this subsection may not add any amount permitted by subsection 3 to the amount levied under this subsection.
 5. In addition to any other levy limitation factor under this section, a taxing district may increase its levy in dollars to reflect new or increased mill levies authorized by the legislative assembly or authorized by the electors of the taxing district.
 6. Under this section a taxing district may supersede any applicable mill levy limitations otherwise provided by law, or a taxing district may levy up to the mill levy limitations otherwise provided by law without reference to this section, but the provisions of this section do not apply to the following:
 - a. Any irrevocable tax to pay bonded indebtedness levied pursuant to section 16 of article X of the Constitution of North Dakota.
 - b. The one-mill levy for the state medical center authorized by section 10 of article X of the Constitution of North Dakota.
 7. A school district choosing to determine its levy authority under this section may apply subsection 3 only to the amount in dollars levied for general fund purposes under section 57-15-14 or, if the levy in the base year included separate general fund and special fund levies under sections 57-15-14 and 57-15-14.2, the school district may apply subsection 3 to the total amount levied in dollars in the base year for both the general fund and special fund accounts. School district levies

under any section other than section 57-15-14 may be made within applicable limitations but those levies are not subject to subsection 3.

8. Optional levies under this section may be used by any city or county that has adopted a home rule charter unless the provisions of the charter supersede state laws related to property tax levy limitations.

SECTION 4. EFFECTIVE DATE. Section 3 of this Act is effective for taxable years beginning after December 31, 1996.

Approved April 15, 1997

Filed April 15, 1997

CHAPTER 19

HOUSE BILL NO. 1019

(Appropriations Committee)
(At the request of the Governor)

STATE AID DISTRIBUTION FUND

AN ACT to make an appropriation for the distribution of state aid distribution fund revenue to political subdivisions of the state of North Dakota; to amend and reenact section 57-39.2-26.1 of the North Dakota Century Code, relating to deposit and allocation of sales tax revenues in the state aid distribution fund; to repeal sections 54-27-20.2, 54-27-20.3, and chapter 57-58 of the North Dakota Century Code, relating to state revenue sharing distribution and personal property tax replacement; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the state aid distribution fund in the state treasury, not otherwise appropriated, to the state treasurer of the state of North Dakota for the purpose of distributing state aid distribution fund revenue to political subdivisions, for the period beginning July 1, 1997, and ending December 31, 1998, as follows:

Grants	<u>\$38,625,000</u>
Total state aid distribution fund appropriation	<u>\$38,625,000</u>

⁶ **SECTION 2. AMENDMENT.** Section 57-39.2-26.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-26.1. Allocation of sales, use, and motor vehicle excise tax revenues to revenue sharing and personal property tax replacement among political subdivisions. Notwithstanding any other provision of law, a portion of sales, use, and motor vehicle excise tax collections equal to ~~sixty~~ forty percent of an amount determined by multiplying the quotient of one percent divided by the general sales tax rate, that was in effect when the taxes were collected, times the net sales, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-40.2, and 57-40.3 must be deposited by the state treasurer in the state aid distribution fund. The state tax commissioner shall certify to the state treasurer the portion of sales, use, and motor vehicle excise tax net revenues that must be deposited in the state aid distribution fund as determined under this section. The Revenues deposited in the state aid distribution fund are provided as a standing and continuing appropriation and must be allocated; ~~subject to legislative appropriation,~~ as follows:

1. Fifty percent of the revenues must be allocated in the first month subsequent to each quarterly period for state revenue sharing as provided in sections 54-27-20.2 and 54-27-20.3. Fifty-three and

⁶ Section 57-39.2-26.1 was also amended by section 3 of House Bill No. 1467, chapter 496.

seven-tenths percent of the revenues must be allocated to counties in the first month after each quarterly period as provided in this subsection.

- a. Ten and four-tenths percent of the amount must be allocated among counties with a population of one hundred thousand or more, based upon the proportion each such county's population bears to the total population of all such counties.
- b. Eighteen percent of the amount must be allocated among counties with a population of forty thousand or more but fewer than one hundred thousand, based upon the proportion each such county's population bears to the total population of all such counties.
- c. Twelve percent of the amount must be allocated among counties with a population of twenty thousand or more but fewer than forty thousand, based upon the proportion each such county's population bears to the total population of all such counties.
- d. Fourteen percent of the amount must be allocated among counties with a population of ten thousand or more but fewer than twenty thousand, based upon the proportion each such county's population bears to the total population of all such counties.
- e. Twenty-three and two-tenths percent of the amount must be allocated among counties with a population of five thousand or more but fewer than ten thousand, based upon the proportion each such county's population bears to the total population of all such counties.
- f. Eighteen and three-tenths percent of the amount must be allocated among counties with a population of two thousand five hundred or more but fewer than five thousand, based upon the proportion each such county's population bears to the total population of all such counties.
- g. Four and one-tenth percent of the amount must be allocated among counties with a population of fewer than two thousand five hundred, based upon the proportion each such county's population bears to the total population of all such counties.

A county shall deposit all revenues received under this subsection in the county general fund. Each county shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, townships, rural fire protection districts, rural ambulance districts, soil conservation districts, county recreation service districts, county hospital districts, the Garrison diversion conservancy district, the southwest water authority, and other taxing districts within the county, excluding school districts, cities, and taxing districts within cities. The share of the county allocation under this subsection to be distributed to a township must be equal to the percentage of the county share of state aid distribution fund allocations that township received during calendar year 1996. The governing boards of the county and township may agree to a different distribution.

2. Fifty percent of the revenues must be allocated for personal property tax replacement as provided in section 57-58-04. Forty-six and three-tenths

percent of the revenues must be allocated to cities in the first month after each quarterly period as provided in this subsection.

- a. Fifty-three and nine-tenths percent of the amount must be allocated among cities with a population of twenty thousand or more, based upon the proportion each such city's population bears to the total population of all such cities.
- b. Sixteen percent of the amount must be allocated among cities with a population of ten thousand or more but fewer than twenty thousand, based upon the proportion each such city's population bears to the total population of all such cities.
- c. Four and nine-tenths percent of the amount must be allocated among cities with a population of five thousand or more but fewer than ten thousand, based upon the proportion each such city's population bears to the total population of all such cities.
- d. Thirteen and one-tenth percent of the amount must be allocated among cities with a population of one thousand or more but fewer than five thousand, based upon the proportion each such city's population bears to the total population of all such cities.
- e. Six and four-tenths percent of the amount must be allocated among cities with a population of five hundred or more but fewer than one thousand, based upon the proportion each such city's population bears to the total population of all such cities.
- f. Three and five-tenths percent of the amount must be allocated among cities with a population of two hundred or more but fewer than five hundred, based upon the proportion each such city's population bears to the total population of all such cities.
- g. Two and two-tenths percent of the amount must be allocated among cities with a population of fewer than two hundred, based upon the proportion each such city's population bears to the total population of all such cities.

A city shall deposit all revenues received under this subsection in the city general fund. Each city shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, park districts and other taxing districts within the city, excluding school districts. The share of the city allocation under this subsection to be distributed to a park district must be equal to the percentage of the city share of state aid distribution fund allocations that park district received during calendar year 1996, up to a maximum of thirty percent. The governing boards of the city and park district may agree to a different distribution.

SECTION 3. REPEAL. Sections 54-27-20.2 and 54-27-20.3 and chapter 57-58 of the North Dakota Century Code are repealed.

SECTION 4. EFFECTIVE DATE. Sections 2 and 3 of this Act are effective on January 1, 1999.

Approved April 8, 1997

Filed April 8, 1997

CHAPTER 20**HOUSE BILL NO. 1020**

(Appropriations Committee)
(At the request of the Governor)

SEED DEPARTMENT

AN ACT to provide an appropriation for defraying the expenses of the state seed department.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated from special funds derived from income, to the state seed department for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Salaries and wages	\$3,514,894
Operating expenses	1,070,210
Equipment	70,000
Capital improvements	354,000
Grants	300,000
Contingency	<u>200,000</u>
Total appropriation from seed department fund	\$5,509,104

SECTION 2. APPROPRIATION LINE ITEM TRANSFERS. Upon approval of the state seed commission, the state seed department may transfer from the contingency line item in its appropriation to any other line item except the capital improvements line item. The commission shall notify the office of management and budget of each transfer.

Approved February 20, 1997
Filed February 21, 1997

CHAPTER 21

HOUSE BILL NO. 1021 (Appropriations Committee) (At the request of the Governor)

GAME AND FISH DEPARTMENT

AN ACT to make an appropriation for defraying the expenses of the state game and fish department.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the game and fish fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state game and fish department for the purpose of defraying the expenses of the various divisions of the department, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Salaries and wages	\$11,292,661
Operating expenses	7,262,014
Equipment	638,150
Capital improvements	898,122
Grants	2,548,400
Noxious weed control	200,000
Land habitat and deer depredation	1,700,000
Wildlife habitat	1,050,000
Small and big game restoration trust	400,000
Grants, gifts, and donations	100,000
Nongame wildlife	120,000
Waterbank program	500,000
Lonetree reservoir	966,654
Total special funds appropriation	<u>\$27,676,001</u>

SECTION 2. HABITAT RESTORATION. The amount of \$1,050,000, or such lesser amount as may be available, for the line item entitled wildlife habitat in section 1 of this Act, is from the habitat restoration stamp program fund, to lease privately owned lands for wildlife habitat to reestablish wildlife population for the biennium beginning July 1, 1997, and ending June 30, 1999. These funds may be spent only for the purposes and using guidelines contained in section 20.1-03-12.1.

SECTION 3. LAND HABITAT AND DEER DEPREDATION. The amount of \$1,000,000, or such lesser amount as may be available, for the line item entitled land habitat and deer depredation in section 1 of this Act, is from the private land habitat improvement fund to improve wildlife habitat on private land and alleviate depredation as provided in section 20.1-02-05 for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 4. NONGAME WILDLIFE. The amount of \$45,000, or such lesser amount as may be available, for the line item entitled nongame wildlife in section 1 of this Act, is from the nongame wildlife fund for the purpose of preservation, inventory, perpetuation, and conservation of nongame wildlife, natural

areas, and nature preserves in this state for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 5. SMALL AND BIG GAME RESTORATION FUND. The amount of \$400,000, or such lesser amount as may be available, for the line item entitled small and big game restoration trust in section 1 of this Act, is from the small and big game restoration trust fund to improve wildlife habitat on private land for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 6. WATERBANK PROGRAM. The amount of \$500,000, or such lesser amount as may be available, for the line item entitled waterbank program in section 1 of this Act, is from the game and fish department operating fund and shall be used to increase water storage and enhance wildlife habitat in North Dakota. Priority shall be given to contracts to increase upper basin storage and enhance wildlife habitat in the Devils Lake basin. Contracts and agreements relating to the waterbank program may be entered into by the director of the game and fish department, in cooperation with the commissioner of agriculture.

Approved April 10, 1997
Filed April 10, 1997

CHAPTER 22

HOUSE BILL NO. 1022 (Appropriations Committee) (At the request of the Governor)

HISTORICAL SOCIETY

AN ACT to provide an appropriation for defraying the expenses of the state historical society and the international peace garden.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and from other income, to the state historical society for the purpose of defraying the expenses of its divisions, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Subdivision 1.

HISTORICAL SOCIETY

Salaries and wages	\$4,101,499
Operating expenses	901,127
Equipment	81,244
Capital improvements	494,197
Grants	485,559
Yellowstone-Missouri-Fort Union Commission	<u>4,977</u>
Total all funds	\$6,068,603
Less estimated income	<u>1,208,157</u>
Total general fund appropriation	\$4,860,446

Subdivision 2.

INTERNATIONAL PEACE GARDEN

Capital improvements	\$ 55,000
International peace garden	<u>364,583</u>
Total general fund appropriation	\$ 419,583
Grand total general fund appropriation H.B. 1022	\$5,280,029

SECTION 2. FUNDING - INTERNATIONAL PEACE GARDEN. The superintendent of the state historical society shall transfer fifty percent of the amount appropriated in the international peace garden line item in subdivision 2 of section 1 of this Act to the international peace garden within ten days of July 1, 1997, and transfer the remaining fifty percent within ten days of July 1, 1998. The state historical society may not reduce the funds appropriated for the international peace garden in subdivision 2 of section 1 of this Act by a percentage greater than any percentage allotment of general fund moneys required of the department pursuant to the provisions of sections 54-44.1-12 and 54-44.1-13.1.

SECTION 3. LEGISLATIVE INTENT - ADMINISTRATIVE COST SAVINGS. It is the intent of the legislative assembly that the historical society use any administrative cost savings realized during the 1997-99 biennium from either general fund or special funds sources for the following programs listed in priority order: the public information program, the volunteer/facility program, or to enter its

library materials into the on-line Dakota information network, a statewide computerized library catalog and circulation system, during the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 4. LEGISLATIVE INTENT - HISTORICAL SOCIETY - SELF-ASSESSMENT. It is the intent of the legislative assembly that the state historical board, during the 1997-99 biennium, assess and evaluate the services and programs, including the administrative structure of the state historical society. The assessment and evaluation must address the efficiency of its administrative structure, the effectiveness of its programs and services in all divisions, the use of its facilities, and its customer relations efforts. The board shall present its report, including findings and recommendations to the budget section of the legislative council by June 30, 1998.

Approved April 10, 1997

Filed April 11, 1997

CHAPTER 23

HOUSE BILL NO. 1023 (Appropriations Committee) (At the request of the Governor)

PARKS AND RECREATION DEPARTMENT

AN ACT to provide an appropriation for defraying the expenses of the parks and recreation department.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the parks and recreation department for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Administration	\$1,626,006
Natural resources	6,737,688
Recreation	<u>1,467,097</u>
Total all funds	\$9,830,791
Less estimated income	<u>3,969,240</u>
Total general fund appropriation	\$5,861,551

SECTION 2. LEGISLATIVE INTENT - FUNDING FOR INTERNATIONAL PEACE GARDEN. It is the intent of the legislative assembly that, rather than the state historical society, the department of parks and recreation include the funding request for the international peace garden in the department's 1999-2001 biennium budget request and that during the biennium beginning July 1, 1997, and ending June 30, 1999, the state historical society assist the department of parks and recreation to develop procedures to administer the funding for the international peace garden beginning July 1, 1999.

SECTION 3. SNOWMOBILE FUND. The amount of \$500,000, or so much of the amount as is necessary, included in the estimated income line item in section 1 of this Act, is from the snowmobile fund for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 4. TRAIL TAX TRANSFER FUND. The amount of \$15,000, or so much of the amount as is necessary, included in the estimated income line item in section 1 of this Act, is from the trail tax transfer fund for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 5. ADDITIONAL INCOME. All income of the parks and recreation department in excess of the estimated income appropriated in section 1 of this Act is hereby appropriated to the parks and recreation department for the biennium beginning July 1, 1997, and ending June 30, 1999, and may be spent only upon authorization of the emergency commission.

SECTION 6. LINE ITEM TRANSFERS. Upon approval of the emergency commission, the parks and recreation department may transfer between various line items in section 1 of this Act appropriation authority of up to ten percent of a given line item to adjust for changing circumstances in meeting established performance measures. Any further transfers must be approved by the budget section.

Approved April 10, 1997

Filed April 11, 1997

CHAPTER 24

HOUSE BILL NO. 1024 (Appropriations Committee) (At the request of the Governor)

TOURISM DEPARTMENT

AN ACT to provide an appropriation for defraying the expenses of the tourism department; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from other income, to the tourism department for the purpose of defraying the expenses of the tourism department for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Salaries and wages	\$ 880,969
Operating expenses	3,290,622
Equipment	15,378
Grants	<u>30,000</u>
Total all funds	\$4,216,969
Less estimated income	<u>363,000</u>
Total general fund appropriation	\$3,853,969

SECTION 2. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying during the 1997-98 interim the coordination of efforts of the department of tourism, department of parks and recreation, department of economic development and finance, state historical society, and council on the arts to maximize their effectiveness by providing unified services to enhance the state's public image. If conducted, the study must focus on marketing, including international marketing, public relations, advertising, promotional materials development, graphic design, customer service training, and other public perception issues affecting North Dakota. The study is not to focus on the feasibility of merging these agencies into a consolidated department.

Approved April 10, 1997
Filed April 11, 1997

CHAPTER 25

HOUSE BILL NO. 1025

(Appropriations Committee)
(At the request of the Governor)

WATER COMMISSION

AN ACT to provide an appropriation for defraying the expenses of the state water commission; to amend and reenact section 57-51.1-07 of the North Dakota Century Code, relating to allocation of the oil extraction tax development fund; to provide for payment in lieu of taxes; to provide for a statewide water development program; to provide for the deposit of finance into the resources trust fund; to provide for retroactive application; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the various divisions of the state water commission for the purpose of defraying the expenses of the various divisions, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Salaries and wages	\$ 7,717,043
Operating expenses	8,176,853
Equipment	152,250
Capital improvements	32,800,000
Grants	13,714,446
Cooperative research	3,050,000
Total all funds	<u>\$65,610,592</u>
Less estimated income	<u>56,588,525</u>
Total general fund appropriation	<u>\$ 9,022,067</u>

SECTION 2. RESOURCES TRUST FUND. The amount of \$13,473,548, or so much of the funds as may be necessary, included in the estimated income line item in section 1 of this Act is from the resources trust fund for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 3. ALLOCATION OF GRANT FUNDS. The funds appropriated in the grants line item in section 1 of this Act must be disbursed by the state water commission in accordance with section 61-02-64.1.

SECTION 4. GRANTS. Section 54-44.1-11 does not apply to appropriations made for grants in this Act. However, this exclusion is only in effect for the two-year period immediately following June 30, 1999. Any unexpended funds after this period has expired must be transferred to the resources trust fund.

SECTION 5. RESOURCES TRUST FUND APPROPRIATION - ADJUSTMENT. If the resources trust fund 1997-99 revenues are in excess of \$13,473,548, any excess is hereby appropriated, subject to emergency commission

approval, from the resources trust fund to the state water commission for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 6. WATER USE FUND. The estimated income line item included in section 1 of this Act includes \$30,000 that the state water commission may spend from the water use fund for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 7. Payments in lieu of real estate taxes. For land acquired for the Devils Lake project, the state water commission shall make payments in lieu of real estate taxes to the counties in which the property is located in the same manner and according to the same conditions and procedures as provided in chapter 57-02.1 for payments in lieu of real estate taxes by the state game and fish department.

SECTION 8. POTENTIAL DAMAGE CAUSED BY CONSTRUCTION OF DEVILS LAKE OUTLET. The state engineer shall establish a baseline of existing conditions and assess, verify, and quantify potential damage to downstream landowners and property caused by construction of an outlet from Devils Lake to the Sheyenne River. In doing so, the state engineer shall consider clearing and snagging operations, damage to basic infrastructure such as roads, culverts, and bridges caused by riverbank erosion and flooding, increased water treatment costs, and any other potential damage that may be of concern to downstream landowners. The sum of one hundred thousand dollars, or so much of the sum as may be necessary, from special and other funds that may be available to the state water commission, as provided in section 1 of this Act, may be used to defray the costs of this effort.

SECTION 9. Statewide water development program. The legislative assembly finds that there is a critical need to develop a comprehensive statewide water development program. The state water commission shall develop and implement a comprehensive statewide water development program. The commission shall design the program to serve the long-term water resource needs of the state and its people and to protect the state's current usage of, and the state's claim to, its proper share of Missouri River water.

SECTION 10. Deposits of income. All income derived from the lease and management of lands acquired by the state water commission for the southwest pipeline project must be deposited in the resources trust fund.

SECTION 11. LEGISLATIVE INTENT - AGENCY OPERATIONS FUNDING. It is the intent of the fifty-fifth legislative assembly that funding for agency operations be primarily funded from the general fund.

SECTION 12. AMENDMENT. Section 57-51.1-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-51.1-07. ~~(Effective through June 30, 1997)~~ Allocation of moneys in oil extraction tax development fund. Moneys deposited in the oil extraction tax development fund must be apportioned quarterly by the state treasurer as follows:

1. Twenty percent must be allocated and credited to the sinking fund established for payment of the state of North Dakota water development bonds, southwest pipeline series, and any moneys in excess of the sum necessary to maintain the accounts within the sinking fund and for the payment of principal and interest on the bonds, must be credited to a special trust fund, to be known as the resources trust fund. The

resources trust fund must be established in the state treasury and the funds therein must be deposited and invested as are other state funds to earn the maximum amount permitted by law which income must be deposited in the resources trust fund. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and are available to:

- a. The state water commission for planning for and construction of water-related projects, including rural water systems. These water-related projects must be those which the state water commission has the authority to undertake and construct pursuant to chapter 61-02; and
 - b. The industrial commission for the funding of programs for development of energy conservation and renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith.
2. Twenty percent must be allocated as provided in section 24 of article X of the Constitution of North Dakota.
 3. Sixty percent must be allocated and credited to the state's general fund for general state purposes.

(Effective July 1, 1997) Allocation of moneys in oil extraction tax development

fund: Moneys deposited in the oil extraction tax development fund must be apportioned quarterly by the state treasurer as follows:

1. Ten percent must be allocated and credited to the sinking fund established for payment of the state of North Dakota water development bonds, southwest pipeline series, and any moneys in excess of the sum necessary to maintain the accounts within the sinking fund and for the payment of principal and interest on the bonds, must be credited to a special trust fund, to be known as the resources trust fund. The resources trust fund must be established in the state treasury and the funds therein must be deposited and invested as are other state funds to earn the maximum amount permitted by law which income must be deposited in the resources trust fund. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and are available to:
 - a. The state water commission for planning for and construction of water-related projects, including rural water systems. These water-related projects must be those which the state water commission has the authority to undertake and construct pursuant to chapter 61-02; and
 - b. The industrial commission for the funding of programs for development of energy conservation and renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products

utilization; and for the making of grants and loans in connection therewith.

2. Twenty percent must be allocated as provided in article X, section 24, of the Constitution of North Dakota.
3. Seventy percent must be allocated and credited to the state's general fund for general state purposes.

SECTION 13. RETROACTIVE APPLICATION. Section 7 of this Act is retroactive in application to January 1, 1996.

Approved April 11, 1997
Filed April 11, 1997

CHAPTER 26

HOUSE BILL NO. 1026

(Appropriations Committee)
(At the request of the Governor)

WORKERS COMPENSATION BUREAU

AN ACT to provide an appropriation for defraying the expenses of the workers compensation bureau and its divisions; to provide authorization to expend funds from the workers' compensation contingency line item; to create and enact a new section to chapter 65-02 of the North Dakota Century Code, relating to a continuing appropriation for allocated loss adjustment expenses; and to amend and reenact section 65-06.1-04 of the North Dakota Century Code, relating to civil air patrol workers' compensation reimbursements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from the workers' compensation fund in the state treasury, not otherwise appropriated, to the workers compensation bureau for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Salaries and wages	\$13,299,049
Operating expenses	5,190,609
Equipment	576,000
Managed care/TPA	858,386
Information reengineering	3,250,000
Contingency	<u>100,000</u>
Total special funds appropriation	\$23,274,044

SECTION 2. WORKERS' COMPENSATION CONTINGENCY - EMERGENCY COMMISSION APPROVAL REQUIRED. The sums appropriated in section 1 of this Act for the workers' compensation contingency line item for the biennium beginning July 1, 1997, and ending June 30, 1999, may be spent only upon authorization of the emergency commission.

SECTION 3. REPORT TO BUDGET SECTION. The workers compensation bureau is to report to the budget section on the expenditure of the \$350,000 provided for critical salary adjustments.

SECTION 4. A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

Allocated loss adjustment expenses - Continuing appropriation - Annual review. Money in the workers' compensation fund is appropriated on a continuing basis for the payment of all allocated loss adjustment expenses experienced by the bureau in its administration of this title. In its annual audit and its biennial report, the bureau shall include a breakdown of those allocated loss adjustment expenses that reflect the attorney fees and costs paid to attorneys who represent injured workers, the attorney

fees and costs paid to attorneys with whom it contracts to represent the bureau, the amount paid for administrative law judges for hearings, and the court reporter and other legal expenses paid. The performance audit required under 1997 Senate Bill No. 2074 must include a review of the bureau's legal costs to determine whether the system is operating efficiently.

SECTION 5. AMENDMENT. Section 65-06.1-04 of the North Dakota Century Code is amended and reenacted as follows:

65-06.1-04. ~~State reimbursement~~ Reimbursement for liability in excess of collected premiums. Whenever claim liability against the fund credited to the classification of civil air patrol members exceeds the amount of premiums paid into ~~such the~~ fund, ~~such the~~ excess liabilities ~~shall be~~ are a general obligation of the state of North Dakota and ~~shall~~ must be reimbursed to the bureau for credit to the workers' compensation fund through legislative appropriation. The adjutant general may use the funds available to the adjutant general under the Federal Employment Compensation Act liability coverage to satisfy the obligation under this section.

Approved April 10, 1997
Filed April 11, 1997

NOTE: The line item in section 1 entitled "Equipment" was vetoed by the Governor, see chapter 555.

CHAPTER 27**HOUSE BILL NO. 1027**

(Appropriations Committee)
 (At the request of the Governor)

RETIREMENT AND INVESTMENT AGENCIES

AN ACT to provide an appropriation for defraying the expenses of various state retirement and investment agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys from special funds derived from income, to the retirement and investment agencies listed in this section for the purpose of defraying their expenses, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Subdivision 1.

RETIREMENT AND INVESTMENT OFFICE

Salaries and wages	\$1,455,252
Operating expenses	943,797
Equipment	18,000
Contingency	<u>82,000</u>
Total special funds appropriation	\$2,499,049

Subdivision 2.

PUBLIC EMPLOYEES RETIREMENT SYSTEM

Salaries and wages	\$1,611,127
Operating expenses	1,124,527
Equipment	27,200
Contingency	<u>25,000</u>
Total special funds appropriation	\$2,787,854
Grand total special funds appropriation in H.B. 1027	\$5,286,903

Approved April 3, 1997

Filed April 3, 1997

CHAPTER 28

HOUSE BILL NO. 1028 (Appropriations Committee) (At the request of the Governor)

STATE OFFICIALS AND INSTITUTIONS

AN ACT to provide an appropriation for defraying the expenses of various state departments and institutions; to provide for a transfer from the accumulated and undivided profits of the Bank of North Dakota to the general fund; to create and enact a new section to chapter 5 of the 1995 Session Laws, relating to capital improvements at the north central research center; to amend and reenact section 4 of chapter 25 of the 1995 Session Laws, relating to state employee defense costs; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, the sums as hereinafter provided or so much of the sums as may be necessary. These sums increase the general fund and special funds appropriation authority enacted by the fifty-fourth legislative assembly to the stated departments and institutions of the state of North Dakota for the purpose of defraying their expenses, for the period beginning January 1, 1997, and ending June 30, 1997, as follows:

Subdivision 1.

OFFICE OF MANAGEMENT AND BUDGET

Administration	\$ 863,481
Facility management	<u>25,000</u>
Total general fund appropriation	\$ 888,481

Subdivision 2.

OFFICE OF THE ATTORNEY GENERAL

Grants	\$ 153,000
Total general fund appropriation	<u>\$ 153,000</u>

Subdivision 3.

BISMARCK STATE COLLEGE

Capital improvements	\$ 160,000
Total general fund appropriation	<u>\$ 160,000</u>

Subdivision 4.

DIVISION OF EMERGENCY MANAGEMENT

Operating expenses	\$3,500,000
Total general fund appropriation	<u>\$3,500,000</u>

Subdivision 5.

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Operating expenses	\$ 852,000
Total all funds	<u>\$ 852,000</u>
Less estimated income	<u>245,000</u>
Total general fund appropriation	\$ 607,000

Grand total general fund appropriation H.B. 1028	\$5,523,021
Grand total special funds appropriation H.B. 1028	\$ 245,000
Grand total all funds appropriation H.B. 1028	\$5,768,021

SECTION 2. TRANSFER. If a settlement is reached with the United States department of health and human services, there is hereby transferred from the accumulated and undivided profits of the Bank of North Dakota to the general fund, an amount equal to the amount set forth in the settlement agreement for settlement of a claim made against the state for imputed interest on health professions student loan and nursing student loan program funds held by various North Dakota institutions of higher learning. The amount of the transfer provided for in this Act may not exceed \$214,540. The industrial commission shall transfer the amount necessary for payment of the settlement agreed to into the general fund within ten days of execution of an agreement between the state and the United States department of health and human services or the effective date of this Act, whichever is later. In the event section 5 of this Act does not become effective, the industrial commission shall transfer to the general fund the amount necessary to pay the settlement on July 1, 1997.

SECTION 3. APPROPRIATION. There is hereby appropriated to the North Dakota university system out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$214,540, or so much of that amount as may be necessary, to comply with the terms of a settlement agreement of claims made against the state by the United States department of health and human services for imputed interest on health professions student loan and nursing student loan program funds held by various institutions of higher learning. The North Dakota university system shall disburse the funds appropriated by this section in amounts not to exceed the amounts set forth below to the:

Nursing student loan program at North Dakota state university	\$ 25,888
Nursing student loan program at Minot state university	42,887
Health professions student loan program at the university of North Dakota	2,852
Nursing student loan program at the university of North Dakota	32,973
United States department of health and human services	109,940

The state board of higher education shall disburse the amounts set forth above, or a lesser amount as required by the settlement agreement reached with the United States department of health and human services, within ten days of the date the industrial commission makes the transfer provided for in section 3 of this Act, but in any event the board shall pay the settlement on or before July 11, 1997.

SECTION 4. A new section to chapter 5 of the 1995 Session Laws is created and enacted as follows:

NORTH CENTRAL RESEARCH CENTER CAPITAL IMPROVEMENTS.

The capital improvements line item in subdivision 8 of section 1 of this Act may be used to construct a new headquarters building at the north central research center.

SECTION 5. AMENDMENT. Section 4 of chapter 25 of the 1995 Session Laws is amended and reenacted as follows:

SECTION 4. BONDING FUND. The appropriation in section 1 of this Act includes up to \$250,000, or so much of the sum as may be necessary, from the state bonding fund to the attorney general for the purpose of providing state employee defense services pursuant to section 26.1-21-10.2. The emergency commission,

notwithstanding section 54-16-04, is authorized during the biennium beginning July 1, 1995, and ending June 30, 1997, to approve the expenditure of the funds from the state bonding fund appropriated in section 1 of this Act to the extent necessary and based upon applications by the attorney general. ~~Funds expended by the attorney general for state employee defense must be reimbursed to the state bonding fund through deficiency appropriation and the attorney general shall report to the budget section of the legislative council the amount of any deficiency appropriation that may be introduced to the fifty-fifth legislative assembly.~~

SECTION 6. LEGISLATIVE INTENT. It is the intent of the fifty-fifth legislative assembly that the general fund appropriation of \$863,481 included in subdivision 1 of section 1 of this Act is to be used by the administration division of the office of management and budget to pay the United States department of health and human services for its share of fire and tornado fund money previously transferred to the general fund of the state treasury. If this appropriation is not sufficient to pay the amount due, including interest, the director of the office of management and budget may request state contingencies funding from the emergency commission, use available general fund moneys appropriated to the fiscal management division of the office of management and budget, or request a deficiency appropriation from the fifty-sixth legislative assembly to obtain funds to pay the remaining amount due.

SECTION 7. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 9, 1997
Filed April 10, 1997

CHAPTER 29**HOUSE BILL NO. 1431**

(Representatives Schmidt, Hausauer, D. Johnson, Kerzman)
(Senators Robinson, Wanzek)

WEED CONTROL

AN ACT to provide appropriations to the commissioner of agriculture for biological weed control programs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is hereby appropriated out of any moneys in the environment and rangeland protection fund in the state treasury, not otherwise appropriated, the sum of \$215,167, or so much of the sum as may be necessary, to the commissioner of agriculture, for for the purpose of developing biological control programs and managing noxious and new invasive weeds for the biennium beginning July 1, 1997, and ending June 30, 1999.

Approved April 8, 1997
Filed April 8, 1997

CHAPTER 30

SENATE BILL NO. 2001

(Appropriations Committee)
(At the request of the Legislative Council)

LEGISLATIVE BRANCH

AN ACT providing an appropriation for defraying the expenses of the legislative branch of government; to create and enact a new section to chapter 54-35 of the North Dakota Century Code, relating to the use of fees collected by the legislative council or the legislative assembly; to repeal section 54-03-19 of the North Dakota Century Code, relating to the seal on legislative bills; to provide for retroactive application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION FOR THE LEGISLATIVE BRANCH OF STATE GOVERNMENT. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the legislative branch of the state government for the purpose of defraying the expenses of that branch, for the fiscal period beginning with the effective date of this Act and ending June 30, 1999, as follows:

Subdivision 1.

FIFTY-FIFTH AND FIFTY-SIXTH LEGISLATIVE ASSEMBLIES AND
BIENNIUM

Salaries and wages	\$ 4,877,733
Operating expenses	3,450,586
Equipment	15,000
National conference of state legislatures	<u>149,394</u>
Total general fund appropriation	\$ 8,492,713

Subdivision 2.

LEGISLATIVE COUNCIL

Salaries and wages	\$ 3,792,548
Operating expenses	2,078,359
Equipment	<u>11,825</u>
Total general fund appropriation	\$ 5,882,732
Grand total general fund appropriation	\$14,375,445

SECTION 2. TRANSFERS. Notwithstanding section 54-16-04, the director of the office of management and budget and the state treasurer shall make transfers of funds between line items of appropriations for the legislative council as may be requested by the chairman of the council or the chairman's designee upon the finding by the chairman or designee that the nature of studies and duties assigned to the council requires the transfers in properly carrying on the council's functions and duties. The director of the office of management and budget and the state treasurer shall similarly make transfers of funds between the line items for the fifty-fifth and fifty-sixth legislative assemblies, upon request by the chairman of the legislative council or the chairman's designee upon the finding by the chairman or designee that the transfers are required for the legislative assembly to carry on its functions and duties.

SECTION 3. A new section to chapter 54-35 of the North Dakota Century Code is created and enacted as follows:

Use of fees - Appropriation. All fees received by the legislative council and the legislative assembly for providing legislative information services and copies of legislative documents must be deposited in the legislative services fund in the state treasury. The legislative services fund is a revolving fund with an authorized ceiling of two hundred fifty thousand dollars. All moneys transferred into the fund, moneys deposited in the fund, and earnings on moneys in the fund are appropriated to the legislative council for use in improving and enhancing legislative information services and the preparation of legislative documents. The fund is not subject to section 54-44.1-11.

SECTION 4. REPEAL - RETROACTIVE APPLICATION. Section 54-03-19 of the North Dakota Century Code is repealed retroactive to January 1, 1997.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 25, 1997

Filed March 26, 1997

CHAPTER 31

SENATE BILL NO. 2002 (Appropriations Committee) (At the request of the Supreme Court)

JUDICIAL BRANCH

AN ACT to provide an appropriation for defraying the expenses of the judicial branch; to provide an exemption from the provisions of section 54-44.1-11 of the North Dakota Century Code; to declare legislative intent; to amend and reenact sections 11-10-02, 11-17-04, 27-02-02, 27-05-03, 27-11-17, 27-11-22, and 27-12-04 of the North Dakota Century Code, relating to the consolidation of the positions of register of deeds and clerk of district court, fees charged by the clerk of district court, salaries of supreme and district court judges, and attorney license fees; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the judicial branch for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Subdivision 1.

SUPREME COURT

Salaries and wages	\$ 4,644,087
Operating expenses	1,490,790
Equipment	132,700
Judges retirement	337,405
Dispute resolution options	20,000
Total all funds	<u>\$ 6,624,982</u>
Less estimated income	8,963
Total general fund appropriation	<u>\$ 6,616,019</u>

Subdivision 2.

DISTRICT COURTS

Salaries and wages	\$21,518,136
Operating expenses	7,906,299
Clerk of court consolidation funding	100,000
Equipment	654,954
Judges retirement	959,232
Total all funds	<u>\$31,138,621</u>
Less estimated income	384,089
Total general fund appropriation	<u>\$30,754,532</u>

Subdivision 3.

JUDICIAL CONDUCT COMMISSION AND DISCIPLINARY BOARD

Judicial conduct commission and disciplinary board	\$ 460,000
Total all funds	<u>\$ 460,000</u>
Less estimated income	225,000
Total general fund appropriation	<u>\$ 235,000</u>

Grand total general fund appropriation	\$37,605,551
Grand total special funds appropriation	\$ 618,052
Grand total all funds appropriation	\$38,223,603

SECTION 2. APPROPRIATION. There is hereby appropriated any funds received by the supreme court, district courts, and judicial conduct commission and disciplinary board, not otherwise appropriated, pursuant to federal acts and private gifts, grants, and donations for the purpose as designated in the federal acts or private gifts, grants, and donations for the period beginning July 1, 1997, and ending June 30, 1999.

SECTION 3. TRANSFERS. The director of the office of management and budget and the state treasurer shall make such transfers of funds between line items of appropriation for the judicial branch of government as may be requested by the supreme court upon a finding by the court that the nature of the duties of the court and its staff requires the transfers to carry on properly the functions of the judicial branch of government.

SECTION 4. EXEMPTION. The supreme court equipment appropriation contained in section 1 of chapter 24 of the 1993 Session Laws is not subject to section 54-44.1-11, and \$75,565 of the unexpended funds from this appropriation are available for the purchase of a photocopier during the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 5. COURT AUTOMATION RESTRICTED. The supreme court and the district courts may not require any county to spend county funds on computer equipment relating to the automation of the court system.

SECTION 6. LEGISLATIVE INTENT. It is the intent of the fifty-fifth legislative assembly that counties use the provisions of chapters 11-10.2, 11-10.3, and 54-40.3 to combine or share the services of clerks of district court and that the judicial branch budget for the 1999-2001 biennium and future bienniums include funding necessary to efficiently fund administration of the district courts.

SECTION 7. AMENDMENT. Section 11-10-02 of the North Dakota Century Code is amended and reenacted as follows:

11-10-02. Number and election of county officers. Each organized county, unless it has adopted one of the optional forms of county government provided by the code or has combined or separated the functions of county offices or redesignated offices as elective or appointive pursuant to chapter 11-10.2 or 11-10.3, must have the following officers:

1. One county auditor.
2. One register of deeds ~~in counties having a population of more than six thousand.~~
3. One clerk of the district court, except as otherwise provided by this section.
4. One state's attorney.
5. One sheriff.
6. One county treasurer.

7. One coroner.
8. ~~Repeated by S.L. 1989, ch. 137, § 10, effective January 1, 1993.~~
9. A board of county commissioners consisting of three or five members as provided in this title.

In counties having a population of six thousand or less, the register of deeds shall perform the functions of the clerk of the district court ~~must be the register of deeds~~, unless the board of county commissioners adopts a resolution separating the offices no less than thirty days before petitions for nomination to county offices may first be filed for the primary election. In a county having a population of more than six thousand, the offices of clerk of district court and register of deeds may be combined into an office of register of deeds if the board of county commissioners, following consultation with the supreme court, adopts a resolution combining the offices no less than thirty days before petitions for nominations to county offices may first be filed for the primary election. For a county ~~which~~ that has properly initiated the option ~~and it is funded by the legislative assembly~~ pursuant to section 11-17-11, and the office of the clerk of court is funded by the legislative assembly, the board of county commissioners may provide for the functions of the register of deeds' services in any appropriate manner ~~deeds, which may include functions of the clerk of district court and other functions as determined by the board of county commissioners.~~ Counties having a population of six thousand or less and exercising the option provided in section 11-17-11 may contract with the state court administrator for the provision of shared funding for register of deeds' services. The required officers must be chosen by the qualified electors of the respective counties at the general election in each even-numbered year, except the register of deeds, county auditor, treasurer, sheriff, state's attorney, and clerk of the district court, who must be chosen in 1966 and every four years thereafter, the members of the board of county commissioners, who must be chosen in the manner prescribed in section 11-11-02, and the county coroner, who must be chosen in the manner prescribed in section 11-19.1-03. The clerk of district court elected pursuant to this section is not subject to election in any future general election that occurs after the start of the state biennium after the county has properly initiated the option and the legislative assembly has provided appropriations pursuant to section 11-17-11.

⁷ **SECTION 8. AMENDMENT.** Section 11-17-04 of the North Dakota Century Code is amended and reenacted as follows:

11-17-04. Fees to be charged by the clerk of the district court.

1. The clerk of the district court shall charge and collect the following fees in civil cases:
 - a. For filing a case for decision that is not a small claims action, eighty dollars.
 - (1) ~~Ten~~ Fifteen dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the civil legal services fund. Any fees collected under this paragraph which

⁷ Section 11-17-04 was also amended by section 1 of House Bill No. 1420, chapter 111, and section 9 of Senate Bill No. 2002, chapter 31.

exceed \$400,000 in any biennium must be paid by the clerk of court to the state treasurer for deposit in the state general fund.

- (2) For the filing of a petition for dissolution of marriage, annulment, or separation from bed and board, fifty dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the displaced homemaker account created by section 14-06.1-14.
 - (3) For all other filings, ~~fifty~~ forty-five dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the state general fund.
 - b. For filing an answer to a case that is not a small claims action, fifty dollars. The clerk shall deposit this fee with the state treasurer for deposit in the general fund in the state treasury.
 - c. For filing a small claims action in district court, ten dollars.
 - d. For filing any matter authorized to be filed in the office of the clerk of court other than under subdivision a, b, or c, five dollars.
 - e. For preparing, certifying, issuing, or transmitting any document, five dollars; or such lesser fee as may be set by a schedule to be promulgated by the state court administrator.
 - f. For filing a motion or an answer to a motion to modify an order for alimony, property division, child support, or child custody, thirty dollars. The clerk shall deposit this fee with the state treasurer for deposit in the general fund of the state treasury.
2. Section 27-01-07 applies to fees charged under this section. The clerk of court may not charge or collect any fee, prescribed by this or any other section, from the state or an agency thereof or from a political subdivision or agency thereof.

⁸ **SECTION 9. AMENDMENT.** Section 11-17-04 of the North Dakota Century Code as amended by section 8 of this Act is amended and reenacted as follows:

11-17-04. Fees to be charged by the clerk of the district court.

1. The clerk of the district court shall charge and collect the following fees in civil cases:
 - a. For filing a case for decision that is not a small claims action, eighty dollars.

⁸ Section 11-17-04 was also amended by section 1 of House Bill No. 1420, chapter 111, and section 8 of Senate Bill No. 2002, chapter 31.

- (1) Fifteen dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the civil legal services fund. Any fees collected under this paragraph which exceed \$400,000 in any biennium must be paid by the clerk of court to the state treasurer for deposit in the state general fund.
 - (2) For the filing of a petition for dissolution of marriage, annulment, or separation from bed and board, fifty dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the displaced homemaker account created by section 14-06.1-14 and fifteen dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the state general fund.
 - (3) For all other filings, ~~forty-five~~ sixty-five dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the state general fund.
- b. For filing an answer to a case that is not a small claims action, fifty dollars. The clerk shall deposit this fee with the state treasurer for deposit in the general fund in the state treasury.
 - c. For filing a small claims action in district court, ten dollars.
 - d. For filing any matter authorized to be filed in the office of the clerk of court other than under subdivision a, b, or c, five dollars.
 - e. For preparing, certifying, issuing, or transmitting any document, five dollars; or such lesser fee as may be set by a schedule to be promulgated by the state court administrator.
 - f. For filing a motion or an answer to a motion to modify an order for alimony, property division, child support, or child custody, thirty dollars. The clerk shall deposit this fee with the state treasurer for deposit in the general fund of the state treasury.
2. Section 27-01-07 applies to fees charged under this section. The clerk of court may not charge or collect any fee, prescribed by this or any other section, from the state or an agency thereof or from a political subdivision or agency thereof.

SECTION 10. AMENDMENT. Section 27-02-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-02-02. Salaries of judges of supreme court. The annual salary of each judge of the supreme court is ~~seventy-five~~ seventy-nine thousand ~~nine~~ seven hundred ~~thirty-six~~ seventy-one dollars through June 30, ~~1996~~ 1998, and ~~seventy-seven~~ eighty-two thousand ~~four~~ one hundred ~~forty-eight~~ sixty-four dollars thereafter. The chief justice of the supreme court is entitled to receive an additional two thousand ~~one~~ two hundred ~~thirty-six~~ fifty dollars per annum through June 30, ~~1996~~ 1998, and two thousand ~~one~~ three hundred ~~eighty-four~~ eighteen dollars per annum thereafter.

SECTION 11. AMENDMENT. Section 27-05-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-05-03. Salaries and expenses of district judges. The annual salary of each district judge is ~~seventy~~ seventy-three thousand sixty-eight ~~six hundred sixteen~~ dollars through June 30, ~~1996~~ 1998, and ~~seventy-one~~ seventy-five thousand four ~~eight~~ hundred ~~seventy-two~~ twenty-four dollars thereafter. Each district judge is entitled to travel expenses including mileage and subsistence while engaged in the discharge of official duties outside the ~~county~~ city in which the judge's chambers are located. The salary and expenses are payable monthly in the manner provided by law. A presiding judge of a judicial district is entitled to receive an additional one thousand ~~six~~ seven hundred ~~fifty-six~~ forty-three dollars per annum, through June 30, ~~1996~~ 1998, and one thousand ~~six~~ seven hundred ~~ninety-two~~ ninety-five dollars thereafter.

SECTION 12. AMENDMENT. Section 27-11-17 of the North Dakota Century Code is amended and reenacted as follows:

27-11-17. Fee payable by all applicants for admission to bar - Disposition of fees. The state bar board ~~shall~~ is entitled to receive a fee to be determined ~~from time to time~~ by the state bar board with the approval of the supreme court of an amount not to exceed one hundred fifty dollars from each applicant for admission to the bar of this state who submits to examination by the state bar board and ~~shall~~ receive a fee to be determined ~~from time to time~~ by the state bar board with the approval of the supreme court of an amount not to exceed ~~two~~ four hundred dollars from each applicant for admission to the bar of this state who seeks admission upon motion in accordance with state law or supreme court rule. All ~~such~~ fees received must be deposited and disbursed in accordance with section 54-44-12.

SECTION 13. AMENDMENT. Section 27-11-22 of the North Dakota Century Code is amended and reenacted as follows:

27-11-22. Annual licenses to practice law and to serve on certain courts - Requirement - Issuance - Fees. Every person who has an unrevoked certificate of admission to the bar of this state and who desires to engage in the practice of law, or who is to serve as a judge of a court of record, shall secure an annual license from the state bar board on or before January first of each year. The secretary-treasurer of the board shall issue the license upon compliance with the rules adopted or approved by the supreme court to assure the professional competence of attorneys, and upon payment of a fee established by the state bar association at its annual meeting, by a majority vote of its members in attendance at the meeting, not to exceed ~~two~~ four hundred ~~fifty~~ dollars. The license is valid for the calendar year for which it is issued. Issuance of an annual license to practice law may not be conditioned upon payment of any surcharge, assessment, or fee in excess of the maximum fee established by this section. This section does not prohibit imposition of a reasonable fee for filing and processing reports of compliance with continuing education requirements.

SECTION 14. AMENDMENT. Section 27-12-04 of the North Dakota Century Code is amended and reenacted as follows:

27-12-04. Moneys payable from state bar fund to state bar association. The state bar association of North Dakota, out of the state bar fund, ~~annually shall~~ must receive ~~eighty~~, for operation of the lawyer discipline system, fifty dollars of each license fee beginning January 1, 1998, and seventy-five dollars of each license fee beginning January 1, 1999. Eighty percent of the remaining amount of the annual license fees paid by licensed members; must be paid to the state bar association for the purpose of paying for the printing administering and distribution of the annual report and proceedings of said operating the association and for the payment of other necessary expenses of the association. ~~Such sum~~ These sums must be paid

quarterly to the association by the state bar board upon vouchers drawn in accordance with section 54-44-12.

SECTION 15. EFFECTIVE DATE. Section 9 of this Act becomes effective on April 1, 1999.

Approved April 17, 1997
Filed April 17, 1997

CHAPTER 32

SENATE BILL NO. 2003

(Appropriations Committee)
(At the request of the Governor)

BOARD OF HIGHER EDUCATION

AN ACT to provide an appropriation for defraying the expenses of the North Dakota university system; to provide a contingent appropriation; to authorize the industrial commission to issue and sell bonds for capital projects; to provide an appropriation; to amend and reenact sections 54-02-11 and 54-17.2-23 of the North Dakota Century Code, relating to the state art gallery and limitation on state building authority lease payments; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds or other income, to the North Dakota university system and to the various institutions of higher learning under the supervision of the North Dakota university system for the purpose of defraying their expenses, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Subdivision 1.

NORTH DAKOTA UNIVERSITY SYSTEM

Salaries and wages		\$356,043,998
Technology		<u>22,813,400</u>
Total salaries, wages, and technology		\$378,857,398
Estimated income:		
Bismarck state college	\$6,461,060	
University of North Dakota - Lake Region	1,423,217	
University of North Dakota - Williston	2,266,959	
University of North Dakota	53,046,381	
North Dakota state university	45,301,979	
North Dakota state college of science	8,482,258	
Dickinson state university	5,497,688	
Mayville state university	2,865,468	
Minot state university	13,452,405	
Valley City state university	3,709,027	
Minot state university - Bottineau	1,352,782	
University of North Dakota medical center	41,176,495	
Forest service	<u>663,040</u>	
Less institutional estimated income		<u>\$185,698,759</u>
General fund appropriation		\$193,158,639

Subdivision 2.

NORTH DAKOTA UNIVERSITY SYSTEM OFFICE

Operating expenses		\$ 711,278
Equipment		21,000
Capital improvements emergency		200,000

Student financial assistance grants	4,480,386
ADA projects	500,000
Computer network management	205,494
Small campus projects	500,000
Professional student exchange program	1,389,801
Disabled student services	26,693
Technical administration	184,906
Contingency fund	200,000
Scholars program	659,286
Perkins loan program match	102,885
Native American scholarships	204,000
Title II	434,000
Competitive research program	1,980,000
Tribal community college IVN grants	100,000
Total operating fund appropriation	\$ 11,899,729
Less operating fund estimated income	3,604,886
General fund appropriation	\$ 8,294,843

Subdivision 3.

BISMARCK STATE COLLEGE

Operating fund appropriation	
Operating expenses	\$ 4,081,904
Equipment	576,407
Capital improvements	1,124,542
Total operating fund appropriation	\$ 5,782,853
Less operating fund estimated income	350,000
General fund appropriation	\$ 5,432,853
Local funds appropriation	2,785,000
Total general fund and local funds appropriations	\$ 8,217,853
Total all funds appropriation	\$ 8,567,853

Subdivision 4.

UNIVERSITY OF NORTH DAKOTA - LAKE REGION

Operating fund appropriation	
Operating expenses	\$ 1,183,386
Equipment	136,338
Capital improvements	74,993
Total operating fund appropriation	\$ 1,394,717
Less operating fund estimated income	0
General fund appropriation	\$ 1,394,717
Local funds appropriation	1,964,700
Total general fund and local funds appropriations	\$ 3,359,417
Total all funds appropriation	\$ 3,359,417

Subdivision 5.

UNIVERSITY OF NORTH DAKOTA - WILLISTON

Operating fund appropriation	
Operating expenses	\$ 1,462,540
Equipment	210,815
Capital improvements	3,071,929
Total operating fund appropriation	\$ 4,745,284
Less operating fund estimated income	3,000,000
General fund appropriation	\$ 1,745,284
Local funds appropriation	182,300
Total general fund and local funds appropriations	\$ 1,927,584
Total all funds appropriation	\$ 4,927,584

Subdivision 6.

UNIVERSITY OF NORTH DAKOTA

Operating fund appropriation	
Operating expenses	\$ 28,875,130
Equipment	1,517,369
Capital improvements	<u>4,857,305</u>
Total operating fund appropriation	\$ 35,249,804
Less operating fund estimated income	<u>2,950,000</u>
General fund appropriation	\$ 32,299,804
Local funds appropriation	<u>56,720,000</u>
Total general fund and local funds appropriations	\$ 89,019,804
Total all funds appropriation	\$ 91,969,804

Subdivision 7.

NORTH DAKOTA STATE UNIVERSITY

Operating fund appropriation	
Operating expenses	\$ 20,342,645
Equipment	1,905,500
Capital improvements	<u>2,777,072</u>
Total operating fund appropriation	\$ 25,025,217
Less operating fund estimated income	<u>1,350,000</u>
General fund appropriation	\$ 23,675,217
Local funds appropriation	<u>18,670,000</u>
Total general fund and local funds appropriations	\$ 42,345,217
Total all funds appropriation	\$ 43,695,217

Subdivision 8.

NORTH DAKOTA STATE SCHOOL OF SCIENCE

Operating fund appropriation	
Operating expenses	\$ 5,768,890
Equipment	1,337,662
Capital improvements	<u>598,947</u>
Total operating fund appropriation	\$ 7,705,499
Less operating fund estimated income	<u>110,000</u>
General fund appropriation	\$ 7,595,499
Local funds appropriation	<u>3,992,300</u>
Total general fund and local funds appropriations	\$ 11,587,799
Total all funds appropriation	\$ 11,697,799

Subdivision 9.

DICKINSON STATE UNIVERSITY

Operating fund appropriation	
Operating expenses	\$ 3,826,432
Equipment	322,500
Capital improvements	<u>321,103</u>
Total operating fund appropriation	\$ 4,470,035
Less operating fund estimated income	<u>150,000</u>
General fund appropriation	\$ 4,320,035
Local funds appropriation	<u>1,430,000</u>
Total general fund and local funds appropriations	\$ 5,750,035
Total all funds appropriation	\$ 5,900,035

Subdivision 10.

MAYVILLE STATE UNIVERSITY

Operating fund appropriation	
Operating expenses	\$ 1,981,057

Equipment	220,500
Capital improvements	131,925
Total operating fund appropriation	\$ 2,333,482
Less operating fund estimated income	0
General fund appropriation	\$ 2,333,482
Local funds appropriation	685,000
Total general fund and local funds appropriations	\$ 3,018,482
Total all funds appropriation	\$ 3,018,482

Subdivision 11.

MINOT STATE UNIVERSITY

Operating fund appropriation	
Operating expenses	\$ 5,938,012
Equipment	779,668
Capital improvements	2,342,098
Total operating fund appropriation	\$ 9,059,778
Less operating fund estimated income	1,500,000
General fund appropriation	\$ 7,559,778
Local funds appropriation	4,535,732
Total general fund and local funds appropriations	\$ 12,095,510
Total all funds appropriation	\$ 13,595,510

Subdivision 12.

VALLEY CITY STATE UNIVERSITY

Operating fund appropriation	
Operating expenses	\$ 2,609,734
Equipment	308,500
Capital improvements	765,000
Special initiatives	202,837
Total operating fund appropriation	\$ 3,886,071
Less operating fund estimated income	0
General fund appropriation	\$ 3,886,071
Local funds appropriation	1,550,000
Total general fund and local funds appropriations	\$ 5,436,071
Total all funds appropriation	\$ 5,436,071

Subdivision 13.

MINOT STATE UNIVERSITY - BOTTINEAU

Operating fund appropriation	
Operating expenses	\$ 987,980
Equipment	147,500
Capital improvements	74,130
Total operating fund appropriation	\$ 1,209,610
Less operating fund estimated income	0
General fund appropriation	\$ 1,209,610
Local funds appropriation	211,100
Total general fund and local funds appropriations	\$ 1,420,710
Total all funds appropriation	\$ 1,420,710

Subdivision 14.

NORTH DAKOTA FOREST SERVICE

Operating fund appropriation	
Operating expenses	\$ 409,299
Equipment	48,011
Capital improvements	81,061

Grants to centennial trees	147,486
Total operating fund appropriation	\$ 685,857
Less operating fund estimated income	147,486
General fund appropriation	\$ 538,371
Local funds appropriation	50,000
Total general fund and local funds appropriations	\$ 588,371
Total all funds appropriation	\$ 735,857

Subdivision 15.

UNIVERSITY OF NORTH DAKOTA MEDICAL CENTER

Operating fund appropriation	
Operating expenses	\$ 16,049,721
Equipment	4,705,045
Total operating fund appropriation	\$ 20,754,766
Less operating fund estimated income	13,008,600
General fund appropriation	\$ 7,746,166
Grand total general fund appropriation S.B. 2003	\$301,940,369
Grand total special funds appropriation S.B. 2003	\$232,219,731
Grand total local funds appropriation S.B. 2003	\$ 92,776,132
Grand total all funds appropriation S.B. 2003	\$626,936,232

SECTION 2. APPROPRIATION TRANSFER. The higher education contingency fund, capital improvements emergency, ADA projects, small campus projects, and disabled student services in subdivision 2 of section 1 must be used for the benefit of the institutions and entities in subdivisions 2 through 15 of section 1 as determined by the North Dakota university system. The board shall notify the office of management and budget of the allocation of general fund authority from the university system contingency fund, capital improvements emergency, ADA projects, small campus projects, and disabled student services to the various entities and institutions and which line items in the various institutions and entities must be adjusted.

SECTION 3. ADDITIONAL INCOME - APPROPRIATION. Operating fund income received in excess of the estimated income line item appropriated to the entities in section 1 of this Act which is deposited in their respective operating funds in the state treasury up to the following amounts is hereby appropriated and may be spent subject to university system approval:

INSTITUTION	AMOUNT
North Dakota university system office	\$ 108,147
Bismarck state college	204,332
University of North Dakota - Lake Region	42,697
University of North Dakota - Williston	158,009
University of North Dakota	1,679,891
North Dakota state university	1,399,559
North Dakota state college of science	257,768
Dickinson state university	169,431
Mayville state university	85,964
Minot state university	448,572
Valley City state university	111,271
Minot state university - Bottineau	40,583
North Dakota forest service	24,316
University of North Dakota medical center	1,625,553
Total	\$6,356,093

Any additional excess estimated income is hereby appropriated and may be spent only upon authorization of the emergency commission. Any funds received by the board of higher education and the entities of the North Dakota university system pursuant to federal acts, private grants, and other sources not deposited in the operating funds in the state treasury are hereby appropriated for the period beginning July 1, 1997, and ending June 30, 1999.

SECTION 4. TRANSFER AUTHORITY. The North Dakota university system is authorized to approve transfer of funds between line items for each entity included in section 1 of this Act and shall notify the office of management and budget of each transfer.

SECTION 5. CONTINGENT APPROPRIATION - NORTH DAKOTA STATE UNIVERSITY AND NORTH DAKOTA STATE COLLEGE OF SCIENCE. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$750,000, and from special funds derived from other income not in the existing budgets, the sum of \$250,000, or so much of the sums as may be necessary, to North Dakota state university and North Dakota state college of science for the purpose of operating the Fargo skills center, for the biennium beginning July 1, 1997, and ending June 30, 1999. The general fund appropriation provided for in this section may only be spent upon certification to the state treasurer that North Dakota state university and North Dakota state college of science have received commitments to provide the \$200,000 of special funds derived from other income not in the existing budgets for the project.

SECTION 6. PROJECT AUTHORIZATIONS. The industrial commission, acting as the North Dakota building authority, shall arrange for the funding of the projects authorized in this section, hereby declared to be in the public interest, through the issuance of evidences of indebtedness under chapter 54-17.2, during the biennium beginning July 1, 1997, and ending June 30, 1999. The proceeds of the evidences of indebtedness and other available funds are hereby appropriated during the biennium beginning July 1, 1997, and ending June 30, 1999, for the following projects:

University of North Dakota	Renovation and addition to the Ed James Wing of the Medical School building	\$3,000,000
North Dakota state university	Animal research facility	5,000,000
North Dakota state college of science	Bute gym remodeling	1,700,000
Minot state university	Moore hall renovation	4,000,000
Department of corrections and rehabilitation	Youth correctional center - Gymnasium renovation	1,400,000

The industrial commission shall issue evidences of indebtedness under this section with the condition that lease rental payments need not begin until July 1, 1999. This authority of the industrial commission to issue evidences of indebtedness ends June 30, 1999, but the industrial commission may continue to exercise all other powers granted to it under chapter 54-17.2 and this Act and to comply with any covenants entered into before that date.

The university of North Dakota may obtain and utilize any available funds received from federal, public, or private sources which are hereby appropriated to the university of North Dakota to assist in the renovation and addition to the Ed James wing of the medical school building at the university of North Dakota, for the biennium beginning July 1, 1997, and ending June 30, 1999.

North Dakota state university may obtain and utilize federal funds to assist in the construction of an animal research facility at North Dakota state university. There is hereby appropriated to North Dakota state university the sum of \$5,000,000, or so much of the sum as may be necessary, from any federal or other funds that may become available for this project, for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 7. LOCAL RESPONSIBILITY. Of the total construction authorized by this Act, a total of \$1,300,000 must be available from non-general fund sources to assist in the construction costs or retirement of the evidences of indebtedness, issued for the project costs associated with construction of the projects authorized by this Act:

North Dakota state university project	\$1,000,000
North Dakota state college of science project	300,000

Unless the moneys are available at an earlier date, payment or payments must be made in six equal annual installments, beginning after fiscal year 1999. Prepayment may be made on any or all of these amounts. Payments of local matching amounts must be deposited in a special industrial commission account from which the industrial commission, acting as the North Dakota building authority, shall use the funds in making principal and interest payments.

SECTION 8. EXEMPTION. The scholars program, university system contingency fund, student financial assistance grants, professional student exchange program appropriations, Native American scholarships, and operating expenses contained in subdivision 1 of section 1 of chapter 3 of the 1995 Session Laws are not subject to the provisions of section 54-44.1-11 and any unexpended funds from these appropriations are available during the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 9. LEGISLATIVE INTENT - FULL-TIME EQUIVALENTS. The North Dakota university system is authorized to adjust or increase full-time equivalent positions as needed, subject to availability of funds. The university system shall report any adjustments to the office of management and budget prior to the submission of the 1999-2001 budget request.

SECTION 10. UNEXPENDED GENERAL FUNDS - EXCESS INCOME. Unexpended general fund dollars appropriated to and excess income received by entities listed in section 1 of chapter 3 of the 1995 Session Laws are not subject to the provisions of section 54-44.1-11 and any unexpended funds from these appropriations or revenues are available during the biennium beginning July 1, 1997, and ending June 30, 1999, and may be expended, as directed by the university system, for capital repairs and improvements, equipment, and other purposes not requiring an increase in future general fund appropriations.

SECTION 11. LOCAL FUNDS APPROPRIATED. The local funds appropriations in section 1 of this Act include funds derived from indirect cost recoveries, special course and program fees, utility sales, building and equipment lease rental, excess property sales, sales and services of educational departments, and

miscellaneous local funds. Any funds from these sources beyond the local funds appropriation included in section 1 of this Act are hereby appropriated for the biennium ending June 30, 1999, and may be spent subject to approval of the North Dakota university system and reported to the budget section of the legislative council.

SECTION 12. NORTH DAKOTA UNIVERSITY SYSTEM - BOND ISSUANCE - PURPOSES. The North Dakota university system, in accordance with chapter 15-55, may issue and sell self-liquidating, tax-exempt bonds in an amount not exceeding \$450,000 for the purpose of financing a revenue-producing parking lot, curb, gutter, sidewalks, and ring road in connection with the rural technology center at the university of North Dakota for the biennium beginning July 1, 1997, and ending June 30, 1999. Bonds issued under the provisions of this Act may not become a general obligation of the state of North Dakota.

SECTION 13. USE OF BOND PROCEEDS - APPROPRIATION. The proceeds resulting from the sale of bonds authorized under section 12, or so much of the sum as may be necessary, plus any available funds received from federal or private sources, are hereby appropriated for the purpose of constructing a parking lot, curb, gutter, sidewalks, and ring road in connection with the rural technology center at the university of North Dakota for the biennium beginning July 1, 1997, and ending June 30, 1999. Any unexpended balance from the sale of bonds must be placed in sinking funds for the retirement of the authorized bonds.

SECTION 14. UNEXPENDED FUNDS - EXEMPTION. Capital improvements funds contained in section 3 of chapter 3 of the 1995 Session Laws for Bute gymnasium at the North Dakota state college of science and capital improvements funds of \$300,000 contained in subdivision 10 of section 1 of chapter 3 of the 1995 Session Laws for old main emergency exits at Minot state university are not subject to the provisions of section 54-44.1-11 and any unexpended funds from these appropriations are available during the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 15. BOARD OF HIGHER EDUCATION ALLOCATIONS - AUTHORITY. The amounts in subdivision 1 of section 1 must be used for the benefit of the institutions and entities in subdivisions 2 through 15 of section 1 as determined by the board of higher education in accordance with the guidelines established in section 16 of this Act. The board shall notify the office of management and budget of the allocation of authority and which line items in the various institutions must be adjusted.

SECTION 16. ALLOCATIONS - SALARIES AND WAGES - TECHNOLOGY FUNDING - LEGISLATIVE INTENT - DECLARATION OF PURPOSE - GUIDELINES.

1. It is the intent of the legislative assembly that the state board of higher education consider the following items in making annual budget allocations for salaries and wages and technology from the appropriations contained in subdivision 1 of section 1 of this Act:
 - a. Base salary allocations are to be made for operations based on mission, historical funding, major enrollment changes, campus size, size of physical plant, instructional and research programs, program type, comparisons with peer institutions, special systemwide services, student service levels, and tuition revenues related to each entity.

- b. Salary increase allocations are to be made based on general salary increases, one-time increases, performance-based increases, market increases, and other increases, including workload changes, new responsibilities, and promotions.
 - c. Targeted initiative allocations are to be made for campus reallocation efforts, consolidation of administrative functions across campuses, collaborative academic programs offered among campuses, and for distance education initiatives or innovations in instructional delivery.
 - d. Technology funding allocations are to be made based on historic funding, the higher education computer network strategic plan, base funding for higher education computer network computer center operations, base funding for interactive video network and on-line Dakota information network operations, the system distance learning plan, training needs, classroom technology renovation, technology innovations, and technology-related matching grants. Technology fees paid by students shall remain at the respective institution.
2. The legislative assembly recognizes the constitutional authority of the state board of higher education and also recognizes the role of the legislative assembly in providing adequate funds for the board to carry out its functions and duties. The legislative assembly declares its intent that allocations are not to be used to close any institution of higher education. In addition, the board of higher education may not substantially reorganize the work of any institution except as authorized by the legislative assembly.
3. The state board of higher education shall follow the following guidelines in making the allocations for salaries and wages and technology as provided in this Act:
 - a. Changes in allocations from historic patterns may be made if based upon documented enrollment changes.
 - b. The state board of higher education may provide incentives to institutions for effectuating savings in administrative costs.
 - c. The board may allocate funds to maximize benefits of matching programs and grants from outside sources.
 - d. Notwithstanding guidelines a, b, and c, an institution of higher education shall receive salaries and wages for the 1997-99 biennium that are at least ninety-five percent of the salaries and wages for the 1995-97 biennium.
4. The state board of higher education shall periodically report to the budget section of the legislative council on the allocations made pursuant to this section and shall make recommendations regarding the allocation process for the 1999-2001 biennium.

SECTION 17. LEGISLATIVE INTENT - STATEWIDE ACCESS TO WORK FORCE TRAINING PROGRAMS - REPORT TO LEGISLATIVE COUNCIL COMMITTEE. It is the intent of the fifty-fifth legislative assembly that

the North Dakota university system cooperate with other state agencies and private organizations to provide work force training programs in a manner that will allow statewide access to these programs and will improve the system's ability to coordinate and implement work force training programs in anticipation of future work force training needs. The state board for vocational and technical education shall provide, during the 1997-98 interim, periodic reports to the legislative council or its designated committee, on the agency's progress in coordinating statewide access to work force training programs.

SECTION 18. LEGISLATIVE INTENT - MINOT STATE UNIVERSITY - BOTTINEAU COAL HANDLING PROJECT. It is the intent of the fifty-fifth legislative assembly that the board of higher education give consideration to allocating \$130,000, from the small campus projects pool of \$500,000, to Minot state university - Bottineau for improvements to the coal handling system.

SECTION 19. ACCEPTANCE OF GIFTS. Notwithstanding any other provisions of law, the dean of the university of North Dakota medical school may accept and receive gifts, grants, bequests, and donations that are hereby appropriated for use by the university of North Dakota medical school.

SECTION 20. AMENDMENT. Section 54-02-11 of the North Dakota Century Code is amended and reenacted as follows:

54-02-11. State art gallery - Ownership of art. The university of North Dakota art galleries, established in 1972 on the university campus in Grand Forks, is hereby designated the North Dakota state art gallery. No general fund moneys may be used to support the North Dakota art gallery now or in the future. Unless clear title is otherwise demonstrable, any work of art, artifact, or artistic property located in the state art gallery is deemed to be the property of the North Dakota museum of art and is subject to disposition by the North Dakota museum of art.

SECTION 21. AMENDMENT. Section 54-17.2-23 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-17.2-23. State building authority lease payments - Limitation. The general fund amount of lease payments for a biennium associated with capital construction projects financed by the industrial commission acting as the state building authority may not exceed the amount equal to a portion of sales, use, and motor vehicle excise tax collections equal to ~~eleven~~ ten percent of an amount, determined by multiplying the quotient of one percent divided by the general sales tax rate that was in effect when the taxes were collected, times the net sales, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-40.2, and 57-40.3.

SECTION 22. EMERGENCY. The capital improvements line items contained in subdivisions 7 and 11 of section 1 include \$150,000 for Sudro hall remodeling at North Dakota state university and \$1,500,000 for a student center addition at Minot state university are declared to be emergency measures and those funds are available immediately upon filing of this Act with the secretary of state.

Approved April 17, 1997
Filed April 17, 1997

CHAPTER 33

SENATE BILL NO. 2004

(Appropriations Committee)
(At the request of the Governor)

HEALTH DEPARTMENT

AN ACT to provide an appropriation for defraying the expenses of the state department of health; to amend and reenact sections 23-09-01, 23-09-02.1, 23-09-03, 23-09-05, 23-09-06, 23-09-07, 23-09-08, 23-09-09, 23-09-10, 23-09-11, 23-09-14, 23-09-16, 23-09-17, 23-09-18, 23-09-20.1, 23-09-21, and 23-09-22 of the North Dakota Century Code, relating to the requirements for the operation of a food and lodging establishment; to repeal section 23-09-12 of the North Dakota Century Code, relating to certificates of inspection; to provide an effective date; to provide an expiration date; to provide legislative intent; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state department of health for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Salaries and wages	\$24,851,601
Operating expenses	31,307,181
Equipment	1,230,440
Capital improvements	28,143
Grants	<u>19,537,146</u>
Total all funds	\$76,954,511
Less estimated income	<u>62,020,071</u>
Total general fund appropriation	\$14,934,440

SECTION 2. ABANDONED MOTOR VEHICLE DISPOSAL FUND. The estimated income line item included in section 1 of this Act includes \$300,000, or so much of the sum as may be necessary, to be made available to the state department of health from the abandoned motor vehicle disposal fund under section 39-26-11 for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 3. ENVIRONMENT AND RANGELAND PROTECTION FUND. The estimated income line item included in section 1 of this Act includes \$200,000, or so much of the sum as may be necessary, to be made available to the state department of health from the environment and rangeland protection fund for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 4. DOMESTIC VIOLENCE FUND. The estimated income line item included in section 1 of this Act includes \$300,000, or so much of the sum as may be necessary, to be made available to the state department of health from the domestic violence fund for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 5. ENVIRONMENTAL HEALTH PRACTITIONER LICENSURE FEE ADMINISTRATIVE FUND. The estimated income line item included in section 1 of this Act includes \$1,000, or so much of the sum as may be necessary, to be made available to the state department of health from the environmental health practitioner licensure fee administrative fund for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 6. WASTEWATER OPERATORS CERTIFICATION FUND. The estimated income line item included in section 1 of this Act includes \$17,800, or so much of the sum as may be necessary, to be made available to the state department of health from the wastewater operators certification fund for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 7. AMENDMENT. Section 23-09-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-09-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Bakery" means an establishment or any part of an establishment ~~which~~ that manufactures or prepares bread or bread products, pies, cakes, cookies, crackers, doughnuts, or other similar products, or candy, whether plain; chocolate or chocolate coated; mixed with nuts, fruits, or other fillers; covered with chocolate or other coating; and shaped, molded, or formed in various shapes. The term does not include food service establishments nor home cake decorators.
2. "Boardinghouse" includes every building or structure, or any part thereof, with accommodations for four or more boarders, which is kept, used, maintained, advertised, or held out to the public as a place where food is furnished to regular boarders for periods of one week or more. ~~A boardinghouse~~ The term does not include a facility providing personal care directly or through contract as defined in section 23-09.3-01 or 50-24.5-01.
3. "Commissary" means a catering establishment, restaurant, or any other place in which food, containers, or supplies are kept, handled, prepared, packaged, or stored, including a service center or base of operations directly from which mobile food units are supplied or serviced. The term does not include an area or conveyance at a vending machine location used for the temporary storage of packaged food or beverages.
4. "Department" means the state department of health.
5. ~~"Hotel" or "motel" includes every building or structure, or any part thereof, kept, used, maintained, advertised, or held out to the public as a place where sleeping accommodations are furnished to the public for periods of less than one week, whether such accommodations are furnished with or without meals. A hotel or motel does not include a facility providing personal care directly or through contract services as defined in section 23-09.3-01 or 50-24.5-01.~~ "Food establishment" means any fixed restaurant, limited restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, catering kitchen, delicatessen, bakery, grocery store, meat market, food processing plant, or similar place in which food

or drink is prepared for sale or service to the public on the premises or elsewhere with or without charge.

6. "Food processing plant" means a commercial operation that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to a consumer.
7. "Limited restaurant" means a food service establishment that is restricted to a specific menu as determined by the department or an establishment serving only prepackaged foods, such as frozen pizza and sandwiches, which receive no more than heat treatment and are served directly in the package or on single-serve articles.
- ~~7.~~ 8. "Lodginghouse" "Lodging establishment" includes every building or structure, or any part thereof, with accommodations for four or more persons, which is kept, used, maintained, or held out to the public as a place where sleeping accommodations are furnished to regular roomers for one week or more for pay to four or more transient guests. A lodginghouse The term does not include a facility providing personal care services directly or through contract services as defined in section 23-09.3-01 or 50-24.5-01.
- ~~8.~~ 9. "Mobile food unit" means a vehicle-mounted food service establishment designed to be readily movable.
- ~~9.~~ 10. "Proprietor" includes the person in charge of a restaurant, hotel, boardinghouse, or lodginghouse food or lodging establishment, as the case may be, whether as owner, lessee, manager, or agent.
- ~~10.~~ 11. "Pushcart" means a non-self-propelled vehicle limited to serving nonpotentially hazardous food or commissary-wrapped food maintained at proper temperatures.
- ~~11.~~ 12. "Restaurant" includes every building or other structure, or any part thereof, and all buildings in connection therewith, that are permanently kept, used, maintained, advertised, or held out to the public as a place where meals or lunches are served, but where sleeping accommodations are not furnished and. The term includes a limited restaurant restricted to a specified menu.
- ~~12.~~ 13. "Retail food store" means any establishment or section of an establishment where food and food products are offered to the consumer and intended for offpremise consumption. The term includes a delicatessen that offers prepared food in bulk quantities only. The term does not include an establishment that handles only prepackaged nonpotentially hazardous foods, roadside market that offers only fresh fruits and vegetables for sale, food service establishment, or food and beverage vending machine.
- ~~13.~~ 14. "Retail meat market" means a commercial establishment and buildings or structures connected with it, used to process, store, or display meat or meat products for retail sale to the public for human consumption. The term does not include a meat establishment operating under the federal or state meat inspection program.

44. 15. "Salvage processing facility" means an establishment engaged in the business of reconditioning or by other means salvaging distressed merchandise for human consumption or use.
45. 16. "Temporary food service establishment" means any food service establishment that operates at a fixed location for not more than fourteen consecutive days. The term does not include a nonprofit public-spirited organization or person providing a limited type of food service as defined in chapter 23-09.2.

SECTION 8. AMENDMENT. Section 23-09-02.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-09-02.1. Smoke detection devices or other approved alarm systems - Administrative procedure and judicial review. Each ~~hotel, motel, and lodginghouse~~ lodging establishment shall install smoke detection devices or other approved alarm systems of a type and in the number approved by the department, in cooperation with the state fire marshal. The department, in cooperation with the state fire marshal, shall adopt reasonable rules ~~and regulations pursuant to chapter 28-32~~ governing the spacing and minimum specifications for approved smoke detection devices or other approved alarm systems. The department and state fire marshal shall provide all reasonable assistance required in complying with the provisions of this section. ~~Any proceeding under this section for issuing or modifying rules and regulations and determining compliance with rules and regulations of the department must be conducted in accordance with chapter 28-32 and appeals may be taken as provided in chapter 28-32.~~

SECTION 9. AMENDMENT. Section 23-09-03 of the North Dakota Century Code is amended and reenacted as follows:

23-09-03. Exiting requirements. Every ~~hotel, motel, lodginghouse, or roominghouse~~ lodging establishment constructed in the state shall have adequate exiting as defined by the state building code in chapter 54-21.3 with the following exceptions:

1. All ~~hotels, motels, roominghouses, and lodginghouses~~ lodging establishments in existence at the time of implementation of this section are required to continue with fire escapes previously provided for within this section providing that they are deemed adequate by the local fire authority having approval, or by the state fire marshal's office.
2. If the ~~hotel, motel, roominghouse, or lodginghouse~~ lodging establishment is provided with exterior access balconies connecting the main entrance door of each unit to two stairways remote from each other.

SECTION 10. AMENDMENT. Section 23-09-05 of the North Dakota Century Code is amended and reenacted as follows:

23-09-05. Fire escapes to be kept clear - Notice of location and use of fire escapes required. Access to fire escapes required under ~~the provisions of this chapter~~ must be kept free and clear at all times of all obstructions of any ~~and every~~ nature. The proprietor of the ~~hotel, motel, lodginghouse, or roominghouse~~ lodging establishment shall provide for adequate exit lighting and exit signs as defined in the state building code, chapter 54-21.3.

SECTION 11. AMENDMENT. Section 23-09-06 of the North Dakota Century Code is amended and reenacted as follows:

23-09-06. Chemical fire extinguishers - Standpipes. Each ~~hotel, motel, roominghouse, and lodginghouse~~ lodging establishment must be provided with fire extinguishers as defined by the national fire protection association standard number ten in quantities as defined by the state building code and the state fire code. Standpipe and sprinkler systems must be installed as required by the state building code and state fire code. Fire extinguishers, sprinkler systems, and standpipe systems must conform with ~~the adopted rules of~~ adopted by the state fire marshal. A contract for sale or a sale of a fire extinguisher installation in a public building is not enforceable, if the fire extinguisher or extinguishing system is of a type not approved by the state fire marshal for such installation. No fire extinguisher of a type not approved by the state fire marshal may be sold or offered for sale within the state.

SECTION 12. AMENDMENT. Section 23-09-07 of the North Dakota Century Code is amended and reenacted as follows:

23-09-07. Elevator shafts to be protected Lodging establishments with elevators - Protection to prevent spread of fire. Every hotel which is equipped with a passenger or freight elevator shall cause the shaftway thereof to be enclosed with an iron sheeting as nearly airtight as is practicable and shall provide automatic floor traps at each door in the shaft. Such appliances must be built in the most approved manner for the prevention or spread of fire by means of such shaft. All After July 1, 1997, all new construction of, remodeling of, or additions to ~~hotels, motels, roominghouses, and lodginghouses~~ lodging establishments equipped with passenger or freight elevators must comply with state building code fire protection requirements.

SECTION 13. AMENDMENT. Section 23-09-08 of the North Dakota Century Code is amended and reenacted as follows:

23-09-08. Bolts or locks to be supplied on doors of sleeping rooms. The doors of all rooms used for sleeping purposes in any ~~hotel, roominghouse, or lodginghouse~~ lodging establishment within this state must be equipped with proper bolts or locks to permit the occupants of such rooms to lock or bolt ~~such the~~ doors securely from within the rooms. Such The locks or bolts must be constructed in a manner ~~which that~~ renders it impossible to unbolt or unlock the door from the outside with a ~~skeleton~~ key or otherwise, or to remove the key therefrom from the outside, while ~~such the~~ room is bolted or locked from within. Any ~~hotel, roominghouse, or lodginghouse~~ lodging establishment proprietor who fails to comply with ~~the provisions of~~ this section is guilty of a class B misdemeanor.

SECTION 14. AMENDMENT. Section 23-09-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-09-09. Sanitation and safety. Every ~~hotel, lodginghouse, boardinghouse, and restaurant~~ food and lodging establishment must be operated with strict regard for the health, safety, and comfort of its patrons. The following sanitary and safety regulations must be followed:

1. ~~Construction, drainage, plumbing.~~ Every ~~hotel, lodginghouse, boardinghouse, and restaurant~~ food and lodging establishment must be well constructed, drained, and provided with plumbing equipment according to established sanitary principles and must be kept free from

effluvia arising from any sewerage, drain, privy, or other source within the control of the proprietor.

2. ~~Lavatories, baths, sinks, drains connected with sewerage.~~ In municipalities in which a system of public water supply and sewerage is maintained, every ~~hotel, lodginghouse, and restaurant~~ food and lodging establishment must be equipped with suitable toilets for the accommodation of its guests, and such toilets must be ventilated and connected by proper means of flushing with the water of said system. All lavatories, bathtubs, sinks, drains, and toilets must be connected with such sewerage system and installed according to all applicable plumbing codes. ~~Separate toilets must be furnished for each sex, each being properly designated.~~
3. ~~Open toilets.~~ When a sewerage system is not available, open toilets must be located not less than forty feet [12.19 meters] from all kitchens, dining rooms, and pantry openings and must be properly cleaned, screened, and disinfected as often as may be necessary to keep them in a sanitary condition. ~~Separate open toilets must be furnished for each sex, each being properly designated.~~
4. ~~Garbage and kitchen refuse.~~ All garbage and kitchen refuse must be kept in watertight containers with tight-fitting covers to prevent decomposition. No dishwater or other substance which is or may become foul or offensive may be thrown upon the ground near any ~~hotel or restaurant building~~ food or lodging establishment.
5. ~~Bedrooms and bedding.~~ All bedrooms must be kept free from ~~vermin insects and rodents,~~ and the bedding in use must be clean and sufficient in quantity and quality. ~~All sheets must be at least eight feet [2.44 meters] in length. In hotels or lodginghouses in which fifty cents or more per night is charged for lodging, the sheets and pillowcases must be changed after the departure of each guest, and it is unlawful to have upon a bed of any such hotel or lodginghouse a mattress of a lower grade than that commonly known to the trade as cotton felt combination. Each mattress must weigh at least thirty-five pounds [15.88 kilograms] unless it is a hair mattress, in which case it must weigh thirty pounds [13.64 kilograms] or more.~~
6. ~~Towels.~~ Each guest in a hotel or lodginghouse must be furnished with at least two towels.
7. ~~Towels in public washroom.~~ Each ~~hotel or restaurant~~ food or lodging establishment shall keep in its main public washroom and available at all hours individual towels or disposable paper towels, a continuous towel system that supplies the user with a clean towel, or a heated air hand drying device for the use of its guests.
8. ~~Cleaning carpets.~~ If bedrooms in a hotel or lodginghouse are carpeted, the carpets must be thoroughly cleaned at least once each year.
9. ~~Fumigation when guest has infectious or contagious disease.~~ In all cases where a patient having an infectious or contagious disease has been confined in a hotel room, the room, upon removal of such patient, must be closed and disinfected. Upon the completion of the disinfection, the

certificate of a reputable physician to that fact must be forwarded to the department.

40. 7. Ventilation. Each room in a hotel or lodginghouse must be properly ventilated by at least one window and by a doorway leading into the hall. Every hotel and lodginghouse must be equipped during the winter months with storm windows installed in such a way that the same may be opened and closed at will. If storm windows having slides thereon are used, such slides must open and close over an opening of not less than ten inches [254 millimeters] by ten inches [254 millimeters]. Bathrooms, toilet rooms, and laundry rooms must be provided with either natural or mechanical ventilation connect directly to the outside.
41. 8. Screens during the summer months. All hotels, restaurants, lodginghouses, and boardinghouses food or lodging establishments shall equip their operable windows during the summer months with screens adequate to keep out flies and mosquitoes insects.
42. 9. Hotel kitchen or dining room not used for sleeping room. Neither the dining room nor kitchen of any hotel or restaurant food or lodging establishment may be used as a sleeping or dressing room by any employee of the hotel or restaurant or by any other person.
43. Disposition of ashes. A metal container must be provided to hold ashes when any ashes are stored in or around a hotel building.
44. Cooking utensils; sanitation of foodstuffs. No rusted tin or iron vessel or utensil may be used in cooking food, and all foodstuffs must be kept in a clean and suitable place, free from dampness and contact with dirty water.
45. Dishes. No dishes that are badly cracked or chipped on the top or side, nor any chipped glasses, may be used in any restaurant or boardinghouse.
46. Sanitation of kitchen. The floors, closets, cupboards, and walls of all kitchens must be kept free from dirt at all times and no dust or grease may be allowed to collect thereon.
47. Common drinking cup prohibited. The use of the common drinking cup in hotels, lodginghouses, dining rooms, or restaurants is prohibited. Water supplies for common drinking use must be kept covered or protected at all times to avoid contamination from dust, dirt, and flies.

SECTION 15. AMENDMENT. Section 23-09-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-09-10. Drinking water standards. Every person operating a hotel, restaurant, lodginghouse, or boardinghouse food or lodging establishment shall see that the drinking water supplied therein is pure and free from disease germs. The source of supply of such water must be far enough removed from open toilet vaults, barns, hogpens, chicken yards, manure piles, or other means of contamination to prevent drainage therefrom to the wells or other sources of supply. The water supply may not contain bacteriological, chemical, or physical impurities which affect, or tend to affect, public health, must meet the bacteriological standards of the United States public health service for waters used upon public or interstate common

carriers, and is subject to examination by the department. If it is unfit for drinking under these requirements, it either must be improved to fulfill the standards or the use thereof must be discontinued obtained from an approved source that is a public water system or a nonpublic water system that is constructed, maintained, and operated according to law.

SECTION 16. AMENDMENT. Section 23-09-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-09-11. Inspection - Reports. Every ~~hotel, restaurant, lodginghouse, and boardinghouse~~ lodging establishment must be inspected at least once every two years by the department. Food establishments must be inspected based on a system of risk categorization which involves types of foods served, the preparation steps these foods require, volume of food, population served, and previous compliance history. Every food establishment must be inspected at least once every two years. The department and its inspectors may enter any such establishment at reasonable hours to determine compliance with this chapter.

SECTION 17. AMENDMENT. Section 23-09-14 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-09-14. State department of health and its inspectors Department to report to state fire marshal. ~~Each inspector of the state~~ The department of health, on or before the fifth sixth day of each month, shall report to the state fire marshal on all ~~hotels, restaurants, boardinghouses, and lodginghouses~~ food and lodging establishments inspected by the ~~inspector department~~ during the preceding month, paying particular attention in ~~such~~ the report to the violation of any provision of this chapter relating to fire escapes and the installation and maintenance of automatic or other fire alarms and fire extinguishing equipment and to any other condition ~~which~~ that might constitute a fire hazard in the premises so inspected. If no such violation or condition is found, the report must so state.

SECTION 18. AMENDMENT. Section 23-09-16 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-09-16. License - Application. Before any ~~hotel, lodginghouse, restaurant, or boardinghouse~~ food or lodging establishment may be operated in this state, it must be licensed by the department. ~~A limited restaurant license may be issued by the department to a licensee and a limited restaurant is restricted to a specified menu. The department may adopt rules relating to limited restaurants. The department shall waive the license requirement for any food and lodging establishment licensed by a city or district health unit.~~ Application for license must be made to the department during December of every year, or ~~prior to~~ before the operating of the ~~hotel, restaurant, lodginghouse, or boardinghouse~~ food or lodging establishment, as the case may be. ~~Such~~ The application must be in writing on forms furnished by the department and must be accompanied by the required fee. An additional amount of fifty percent of the license fee must be imposed upon renewal if the license was not renewed before February first following the expiration date.

SECTION 19. AMENDMENT. Section 23-09-17 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-09-17. License fees. The following annual license fees must be paid to the department by proprietors of ~~hotels, restaurants, boardinghouses, lodginghouses, and other food and food service~~ food and lodging establishments:

1. For a ~~hotel or boardinghouse~~ lodging establishment containing not more than three sleeping rooms, twenty dollars.
2. For a ~~hotel or boardinghouse~~ lodging establishment containing at least four but not more than ten sleeping rooms, thirty dollars.
3. For a ~~hotel or boardinghouse~~ lodging establishment containing more than ten sleeping rooms and not more than twenty sleeping rooms, forty-five dollars.
4. For a ~~hotel or boardinghouse~~ lodging establishment containing more than twenty sleeping rooms and not more than fifty sleeping rooms, sixty dollars.
5. For a ~~hotel or boardinghouse~~ lodging establishment containing fifty-one sleeping rooms or more, eighty dollars.
6. For a restaurant or boardinghouse with a seating capacity of less than seventy-five, ~~thirty-five~~ fifty dollars.
7. For a restaurant or boardinghouse with a seating capacity of seventy-five to not more than one hundred fifty, ~~forty-five~~ sixty-five dollars.
8. For a restaurant or boardinghouse with a seating capacity of more than one hundred fifty, ~~fifty-five~~ seventy dollars.
9. For a limited restaurant, ~~twenty-five~~ forty dollars.
10. For a retail food store, retail meat market, or bakery with not more than five thousand square feet [464.52 square meters], ~~twenty-five~~ forty dollars.
11. For a retail food store, retail meat market, or bakery with more than five thousand square feet [464.52 square meters], ~~forty~~ fifty dollars.
12. For a bar or tavern dispensing beer, liquor, or alcoholic beverages, ~~twenty~~ thirty dollars.
13. For an establishment operating one or more mobile food units or pushcarts, ~~twenty-five~~ forty dollars.
14. For a salvaged food distributor, ~~twenty-five~~ forty dollars.
15. For a food processing plant, not licensed and inspected by any other federal or local health unit, twenty-five dollars.

If a business operates more than one type of establishment on the same premises and under the same management, the department shall issue a single license ~~must be issued by the department~~ stating the types of establishments the business is licensed for and the maximum license fee charged may not exceed seventy-five dollars for an establishment with not more than five thousand square feet [464.52 square meters] and one hundred fifty dollars for an establishment over five thousand square feet [464.52 square meters]. The department shall waive all or a portion of the license fee for any ~~restaurant, limited restaurant, boardinghouse, or other food or food service~~ lodging establishment that is subject to a license fee by a city or district health unit if the local unit's sanitation, safety, and inspection rules are approved by

the department. A reduced license fee in the amount of one-half the applicable license fee must be charged for a new food and lodging establishment beginning operations after July first of each year and for changes in ownership and location of such existing establishments after July first of each year.

SECTION 20. AMENDMENT. Section 23-09-17 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-09-17. License fees. The following annual license fees must be paid to the department by proprietors of ~~hotels, restaurants, boardinghouses, lodginghouses, and other food and food service~~ food and lodging establishments:

1. For a ~~hotel or lodginghouse~~ lodging establishment containing not more than three sleeping rooms, twenty dollars.
2. For a ~~hotel or lodginghouse~~ lodging establishment containing at least four but not more than ten sleeping rooms, thirty dollars.
3. For a ~~hotel or lodginghouse~~ lodging establishment containing more than ten sleeping rooms and not more than twenty sleeping rooms, forty-five dollars.
4. For a ~~hotel or lodginghouse~~ lodging establishment containing more than twenty sleeping rooms and not more than fifty sleeping rooms, sixty dollars.
5. For a ~~hotel or lodginghouse~~ lodging establishment containing fifty-one sleeping rooms or more, eighty dollars.
6. For a restaurant or boardinghouse with a seating capacity of less than seventy-five, ~~thirty-five~~ sixty dollars.
7. For a restaurant or boardinghouse with a seating capacity of seventy-five to not more than one hundred fifty, ~~forty-five~~ eighty dollars.
8. For a restaurant or boardinghouse with a seating capacity of more than one hundred fifty, ~~fifty-five~~ eighty-five dollars.
9. For a limited restaurant, ~~twenty-five~~ fifty dollars.
10. For a retail food store, retail meat market, or bakery with not more than five thousand square feet [464.52 square meters], ~~twenty-five~~ fifty dollars.
11. For a retail food store, retail meat market, or bakery with more than five thousand square feet [464.52 square meters], ~~forty~~ sixty dollars.
12. For a bar or tavern dispensing beer, liquor, or alcoholic beverages, ~~twenty~~ forty dollars.
13. For an establishment operating one or more mobile food units or pushcarts, ~~twenty-five~~ fifty dollars.
14. For a salvaged food distributor, ~~twenty-five~~ fifty dollars.
15. For a food processing plant, not licensed and inspected by any other federal or local health unit, twenty-five dollars.

If a business operates more than one type of establishment on the same premises and under the same management, ~~the department shall issue a single license must be issued by the department~~ stating the types of establishments the business is licensed for and the maximum license fee charged may not exceed seventy-five dollars for an establishment with not more than five thousand square feet [464.52 square meters] and one hundred fifty dollars for an establishment over five thousand square feet [464.52 square meters]. The department shall waive all or a portion of the license fee for any ~~restaurant, limited restaurant, boardinghouse, or other food or food service~~ lodging establishment that is subject to a license fee by a city or district health unit if the local unit's sanitation, safety, and inspection rules are approved by the department. A reduced license fee in the amount of one-half the applicable license fee must be charged for a new food and lodging establishment beginning operations after July first of each year and for changes in ownership and location of such existing establishments after July first of each year.

SECTION 21. AMENDMENT. Section 23-09-18 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-09-18. Failure to comply with ~~provisions of chapter~~ - Notice - How served. Whenever the proprietor of any ~~hotel, restaurant, lodginghouse, or boardinghouse~~ food or lodging establishment fails to comply with this chapter, the proprietor must be given notice of the time within which the proprietor must meet the requirements. The notice must be in writing and delivered personally by an inspector of the department or sent by registered mail.

SECTION 22. AMENDMENT. Section 23-09-20.1 of the North Dakota Century Code is amended and reenacted as follows:

23-09-20.1. Guest record. A record must be kept in each ~~hotel or lodginghouse~~ lodging establishment in which every individual patronizing ~~such hotel or lodginghouse~~ the lodging establishment shall write ~~his or her~~ that individual's name and address and the number of members in ~~his or her~~ the party who will occupy a room or rooms therein.

SECTION 23. AMENDMENT. Section 23-09-21 of the North Dakota Century Code is amended and reenacted as follows:

23-09-21. Penalty - General. Any person operating a ~~hotel, restaurant, lodginghouse, or boardinghouse~~ food or lodging establishment in this state, or letting a building used for such business, without first having complied with ~~the provisions~~ of this chapter, is guilty of a class B misdemeanor.

SECTION 24. AMENDMENT. Section 23-09-22 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-09-22. License canceled. Whenever the proprietor of a ~~hotel, restaurant, lodginghouse, or boardinghouse~~ food or lodging establishment has been convicted of a violation of ~~any provision~~ of this chapter and for a period of ten days after the conviction fails to comply with any provision ~~thereof~~ of this chapter, the department may cancel the proprietor's license.

SECTION 25. REPEAL. Section 23-09-12 of the North Dakota Century Code is repealed.

SECTION 26. EFFECTIVE DATE - EXPIRATION DATE. Section 19 of this Act becomes effective on January 1, 1998, and expires as of January 1, 1999. Section 20 of this Act becomes effective on January 1, 1999.

SECTION 27. LEGISLATIVE COUNCIL STUDY - EMERGENCY MEDICAL SERVICES. The legislative council shall consider studying emergency medical services during the 1997-98 interim. If conducted, the study should include a review of the emergency medical services system, the training and equipment funding needs of emergency medical providers, and the role of emergency medical services in trauma care coordination.

SECTION 28. LEGISLATIVE INTENT. It is the intent of the legislative assembly that women, infants, and children food payments be budgeted as a separate line item in the department of health's 1999-2001 budget request.

SECTION 29. LEGISLATIVE COUNCIL STUDY - RELOCATION OF THE STATE CRIME LABORATORY. If the legislative council studies the criminal justice system pursuant to Senate Concurrent Resolution No. 4020 during the 1997-98 interim, the study should include a review of the feasibility of placing the administrative responsibility for the state crime laboratory with the office of the attorney general.

Approved April 11, 1997

Filed April 11, 1997

CHAPTER 34

SENATE BILL NO. 2005

(Appropriations Committee)
(At the request of the Governor)

INDIAN AFFAIRS COMMISSION

AN ACT to provide an appropriation for defraying the expenses of the Indian affairs commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the Indian affairs commission for the purpose of defraying the expenses of the Indian affairs commission, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Salaries and wages	\$230,410
Operating expenses	33,888
Grants	<u>200,000</u>
Total all funds	\$464,298
Less estimated income	<u>200,394</u>
Total general fund appropriation	\$263,904

SECTION 2. ALCOHOL AND DRUG EDUCATION PROGRAM - EXPENDITURE - LIMITATIONS. The moneys appropriated in the grants line item in section 1 of this Act for the Native American alcohol and drug abuse education program may not be spent for the services provided by the tribes to administer the program. The local grant recipient is required to provide match equal to the grant amount with funding or in-kind service.

SECTION 3. ESTIMATED INCOME. The estimated income line item in section 1 of this Act includes the sum of \$200,000, or so much of the sum as may be necessary, from the children's services coordinating committee for the purpose of defraying the expenses related to the Native American youth alcohol and drug abuse education program.

Approved April 8, 1997
Filed April 8, 1997

CHAPTER 35

SENATE BILL NO. 2006 (Appropriations Committee) (At the request of the Governor)

AERONAUTICS COMMISSION

AN ACT to provide an appropriation for defraying the expenses of the aeronautics commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the aeronautics commission for the purpose of defraying the expenses of the aeronautics commission, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Salaries and wages	\$ 546,830
Operating expenses	963,860
Equipment	71,500
Capital improvements	160,000
Grants	<u>12,493,425</u>
Total all funds	\$14,235,615
Less estimated income	<u>13,732,190</u>
Total general fund appropriation	\$ 503,425

Approved March 21, 1997
Filed March 21, 1997

CHAPTER 36

SENATE BILL NO. 2007

(Appropriations Committee)
(At the request of the Governor)

VETERANS' HOME AND DEPARTMENT OF VETERANS' AFFAIRS

AN ACT to provide an appropriation for defraying the expenses of the veterans' home and department of veterans' affairs; and to provide legislative intent regarding veterans' home management, budgeting, and accounting practices and related budget section reports.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the veterans' home and the department of veterans' affairs for the purpose of defraying their expenses, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Subdivision 1.

VETERANS' HOME

Salaries and wages	\$5,142,487
Operating expenses	1,797,976
Equipment	44,900
Capital improvements	<u>336,700</u>
Total all funds	\$7,322,063
Less estimated income	<u>5,283,559</u>
Total general fund appropriation	\$2,038,504

Subdivision 2.

VETERANS' AFFAIRS

Salaries and wages	\$ 367,127
Operating expenses	79,611
Equipment	<u>3,000</u>
Total all funds	\$ 449,738
Less estimated income	<u>26,345</u>
Total general fund appropriation	\$ 423,393
Grand total general fund appropriation S.B. 2007	\$2,461,897
Grand total special funds appropriation S.B. 2007	\$5,309,904
Grand total all funds appropriation S.B. 2007	\$7,771,801

SECTION 2. APPROPRIATION. The estimated income line item included in subdivision 1 of this Act includes \$577,866, or so much of the sum as may be necessary, to be made available to the veterans' home operating fund from the veterans' home improvement fund.

SECTION 3. VETERANS' HOME MANAGEMENT, BUDGETING, AND ACCOUNTING PRACTICES - BUDGET SECTION REPORTING. The commandant of the veterans' home shall improve the veterans' home's management, budget, and accounting functions including those identified in the veterans' home audit report for the fiscal year ending June 30, 1996, and by the legislative audit and fiscal review committee, including budgeting procedures that reduce frequent line item transfers and requests for additional funding authority approvals by the emergency commission, a physical inventory of fixed assets, appropriate bidding for improvement projects, and proper accounting for items not included in the statewide accounting management information system. The commandant shall develop a corrective plan of action to address the improvements and periodically report to the budget section regarding the development of the corrective plan of action and its implementation.

Approved April 8, 1997

Filed April 8, 1997

CHAPTER 37**SENATE BILL NO. 2008**

(Appropriations Committee)
(At the request of the Governor)

BANKING AND FINANCIAL INSTITUTIONS

AN ACT to provide an appropriation for defraying the expenses of the department of banking and financial institutions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the financial institutions regulatory fund in the state treasury, not otherwise appropriated, to the department of banking and financial institutions for the purpose of defraying the expenses of the department of banking and financial institutions, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Salaries and wages	\$2,242,290
Operating expenses	484,239
Equipment	21,494
Contingency - banking and financial institutions	20,000
Total appropriation from the financial institutions regulatory fund	<u>\$2,768,023</u>

Approved March 21, 1997

Filed March 21, 1997

CHAPTER 38**SENATE BILL NO. 2009**
(Appropriations Committee)
(At the request of the Governor)**STATE FAIR ASSOCIATION**

AN ACT to provide an appropriation for defraying the expenses of the state fair association; and to provide a statement of legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the state fair association for the purpose of defraying the expenses of the state fair association, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Capital improvements	\$210,000
Premiums	280,136
Youth premiums	<u>39,864</u>
Total general fund appropriation	\$530,000

SECTION 2. LEGISLATIVE INTENT. It is the intent of the legislative assembly that the state fair association use eighty percent of the funds appropriated in the premiums line item in section 1 of this Act for paying premiums to youth exhibitors and twenty percent of the funds appropriated in the premiums line item for paying premiums to adult exhibitors for the biennium beginning July 1, 1997, and ending June 30, 1999.

Approved April 8, 1997
Filed April 8, 1997

CHAPTER 39

SENATE BILL NO. 2010

(Appropriations Committee)
(At the request of the Governor)

COUNCIL ON THE ARTS

AN ACT to provide an appropriation for defraying the expenses of the council on the arts and an appropriation of funds from the cultural endowment fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the council on the arts for the purpose of defraying the expenses of the council on the arts, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Salaries and wages	\$ 356,052
Operating expenses	187,053
Equipment	3,500
Grants	<u>1,028,000</u>
Total all funds	\$1,574,605
Less estimated income	<u>801,304</u>
Total general fund appropriation	\$ 773,301

SECTION 2. APPROPRIATION. All income from the cultural endowment fund is hereby appropriated to the council on the arts for the furthering of the cultural arts in the state for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 3. ADDITIONAL INCOME. All income of the council on the arts in excess of the estimated income appropriated in section 1 of this Act is hereby appropriated to the council on the arts for the biennium beginning July 1, 1997, and ending June 30, 1999, and may be spent only upon authorization of the emergency commission.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 40

SENATE BILL NO. 2011 (Appropriations Committee) (At the request of the Governor)

HIGHWAY PATROL

AN ACT to provide an appropriation for defraying the expenses of the highway patrol; to provide for mobile data terminals; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the highway patrol for the purpose of defraying its expenses, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Administration	\$ 1,871,111
Field operations	20,763,330
Law enforcement training academy	889,853
Comprehensive public communications plan	<u>250,000</u>
Total all funds appropriation	\$23,774,294
Less estimated income	<u>23,649,294</u>
Total general fund appropriation	\$ 125,000

SECTION 2. SPECIAL FUNDS TRANSFER. The total special funds appropriation line item in section 1 of this Act includes the sum of \$21,983,552, or so much of the sum as may be necessary, from the state highway fund that may be transferred at the direction of the superintendent of the highway patrol for the purpose of defraying the expenses of the highway patrol during the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 3. PAYMENTS TO HIGHWAY PATROL OFFICERS. Each patrol officer of the state highway patrol shall receive from funds appropriated in section 1 of this Act an amount not to exceed one hundred seventy dollars per month for the biennium beginning July 1, 1997, and ending June 30, 1999. The payments are in lieu of reimbursement for meals and other expenses, except lodging, while in travel status within the state of North Dakota or while at their respective home stations. The amounts must be paid without the presentation of receipts or other memorandums at the time and in the same manner as salaries of members of the highway patrol are paid.

SECTION 4. LINE ITEM TRANSFERS. Upon approval of the emergency commission, the highway patrol may transfer between various line items in section 1 of this Act appropriation authority of up to ten percent of a given line item to adjust for changing circumstances in meeting established performance measures. Any further transfers must be approved by the budget section.

SECTION 5. MOBILE DATA TERMINALS. Of the amount included in the field patrol line item in section 1 of this Act, \$585,000 provides for the purchase

of mobile data terminals for patrol cars. These funds may not be expended prior to the completion of the mobile data communications plan.

SECTION 6. APPROPRIATION. There is hereby appropriated from special funds, derived from federal funds, the sum of \$109,000, or so much of the sum as may be necessary, to the highway patrol for the purpose of motor carrier research and overtime speed enforcement for the period beginning with the effective day of this Act and ending June 30, 1997.

SECTION 7. ADDITIONAL INFORMATION. Included in the program-based performance budget appropriation in section 1 of this Act is anticipated funding for the following: \$17,925,294 for salaries and wages; \$4,637,000 for operating expenses; \$755,000 for equipment; \$32,000 for capital improvements; and \$425,000 for grants. These amounts are provided for informational purposes only.

SECTION 8. EMERGENCY. The comprehensive public communications line item in section 1 of this Act and section 6 of this Act are declared to be an emergency measure.

Approved April 8, 1997

Filed April 8, 1997

CHAPTER 41

SENATE BILL NO. 2012 (Appropriations Committee) (At the request of the Governor)

DEPARTMENT OF TRANSPORTATION

AN ACT to make an appropriation for defraying the expenses of the various divisions under the supervision of the director of the department of transportation; to limit expenditures on certain streets; to create and enact a new section to chapter 24-02 of the North Dakota Century Code, relating to cooperating with other states; to amend and reenact subsection 3 of section 24-02-37, sections 24-02-37.1, 39-12-02, and 54-06-09 of the North Dakota Century Code, relating to the special road fund, special trip permits, and state employee vehicle usage; to repeal section 24-02-37.1 of the North Dakota Century Code, relating to the special road advisory committee; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys from special funds derived from federal funds and other income, to the various divisions under the supervision of the director of the department of transportation for the purpose of defraying its expenses, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Administration	\$ 22,383,770
Motor vehicle	6,625,312
Driver's license	8,950,358
Highways	384,730,803
Fleet services	<u>30,662,535</u>
Total all funds	<u>\$453,352,778</u>

SECTION 2. LINE ITEM TRANSFERS. Upon approval of the emergency commission, the director of the department of transportation may transfer between various line items in section 1 of this Act appropriation authority of up to ten percent of a given line item to adjust for changing circumstances in meeting established performance measures. Any further transfers must be approved by the budget section.

SECTION 3. TRANSFER. There is hereby transferred to the state highway fund in the state treasury, out of motor vehicle excise tax revenue, collected pursuant to section 57-40.3-02, the sum of \$282,200 for the purpose of reimbursing the department of transportation for expenses incurred in the collection of motor vehicle excise tax.

SECTION 4. LEGISLATIVE INTENT - BUDGET SECTION REPORT. It is the intent of the legislative assembly that the department of transportation evaluate the continued use of its 1978 model cessna airplane. The evaluation should include an analysis of the costs of continued maintenance and repair of the airplane and options for replacement of the airplane which may include selling or trading the

airplane and leasing or purchasing a new or used airplane. The department shall present a report on its evaluation to the budget section by November 1998.

SECTION 5. EXPENDITURES FOR SCHAFFER STREET LIMITED. No funds from any source may be used to widen Schaffer street in the city of Bismarck. However, funds may be used to maintain or improve the street.

SECTION 6. A new section to chapter 24-02 of the North Dakota Century Code is created and enacted as follows:

Intergovernmental cooperation - Infrastructure bank. The director may contract and cooperate with other states, with political subdivisions of this state, and with the United States government to establish, maintain, and operate a multistate infrastructure bank pursuant to section 350 of the National Highway System Designation Act of 1995 [Pub. L. 104-59; 109 Stat. 568, 618-622] and the Department of Transportation and Related Agencies Appropriations Act of 1997 [Pub. L. 104-205, Title I]. The director may transfer and commit to the multistate infrastructure bank state and federal-aid highway funds, up to a maximum of ten percent of eligible federal-aid highway funds, and the required state matching funds. All funds and revenue allocated or generated under this section must be used for purposes of funding eligible projects as determined by agreement of the members of the multistate infrastructure bank and as authorized by state and federal law.

SECTION 7. AMENDMENT. Subsection 3 of section 24-02-37 of the North Dakota Century Code is amended and reenacted as follows:

3. The state treasurer shall deposit the moneys in the state highway fund in an interest-bearing account at the Bank of North Dakota. ~~The state treasurer shall deposit any~~ Any income derived from the deposit of the moneys in a special fund in the state treasury known as the special road must be retained in the state highway fund. ~~Moneys, and any earnings on the moneys, in the special road fund may be used, within the limits of legislative appropriation, exclusively for the construction and maintenance of access roads to and roads within recreational, tourist, and historical areas as designated by the commissioner with the advice of the special road advisory committee. Requests by political subdivisions or state agencies for funding from the special road fund must be made to the commissioner on forms designated by the commissioner. The commissioner may require the political subdivision or state agency to contribute to the cost of the project as a condition of any expenditure authorized from the special road fund.~~

⁹ **SECTION 8. AMENDMENT.** Section 24-02-37.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24-02-37.1. Special road advisory committee - Special road fund. The special road advisory committee consists of one member of the senate transportation committee and one member of the senate appropriations committee appointed by the chairman of the legislative council and one member of the house of

⁹ Section 24-02-37.1 was repealed by section 11 of Senate Bill No. 2012, chapter 41, and also amended by section 15 of Senate Bill No. 2052, chapter 432.

representatives transportation committee and one member of the house of representatives appropriations committee appointed by the chairman of the legislative council and also the director of the game and fish department, the director of the parks and recreation department, the director of the department of economic development and finance, and the commissioner.

The special road fund is a special fund in the state treasury that consists of moneys deposited in the fund through June 30, 1997. Moneys, and any earnings on the moneys, in the special road fund may be used, within the limits of legislative appropriation, exclusively for the construction and maintenance of access roads to and roads within recreational, tourist, and historical areas as designated by the commissioner with the advice of the special road advisory committee. Requests by political subdivisions or state agencies for funding from the special road fund must be made to the commissioner on forms designated by the commissioner. The commissioner may require the political subdivision or state agency to contribute to the cost of the project as a condition of any expenditure authorized from the special road fund. The state treasurer shall transfer any moneys remaining in the fund on June 30, 1999, to the state highway fund.

The committee shall meet at the call of the commissioner, who is chairman of the committee, to review requests for funding from the special road fund and to advise the commissioner regarding funding requested projects. The commissioner shall provide staff services to the committee. All final decisions regarding funding requested projects are in the sole discretion of the commissioner. The members of the commission who are members of the legislative assembly must be compensated by the department, from moneys appropriated from the special road fund, for attendance at committee meetings at the rate provided in section 54-35-10 and are entitled to reimbursement for expenses incurred in attending the meetings in the amounts provided by law for other state officers.

SECTION 9. AMENDMENT. Section 39-12-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-12-02. Special permits for vehicles of excessive size and weight issued - Contents - Fees.

1. The highway patrol and local authorities in their respective jurisdictions, upon application and payment of the appropriate charges and for good cause shown, may issue a special written permit authorizing the applicant to operate or move a vehicle, mobile home or modular unit of a size or weight exceeding the maximum specified by this chapter, upon a highway under the jurisdiction of the body granting the permit. Every ~~such~~ permit may designate the route to be traversed, and may contain any other restrictions or conditions deemed necessary by the body granting ~~such~~ the permit. Every ~~such~~ permit must be carried in the vehicle to which it refers and must be opened to inspection by any peace officer or agent of the superintendent of the highway patrol unless prior approval is obtained from the highway patrol. It is a violation of ~~the provisions of~~ this chapter for any person to violate any of the terms or conditions of ~~such special~~ the permit. All permits for the movement of excessive size and weight on state highways must be single trips only. The highway patrol and local authorities may adopt rules governing the movement of oversize and overweight vehicles.
2. An appropriate charge must be made for each permit and all funds collected hereunder by the highway patrol must be deposited in the state

highway fund and are hereby appropriated for use in the construction and maintenance of highways and operating expenses of the department of transportation. ~~For each permit for the movement of a mobile home or modular unit, the fee is ten dollars.~~ Official or publicly owned vehicles may not be required to pay charges for permits. The minimum fee for selected charges is as follows:

- a. The fee for a seasonal permit, harvest and wintertime, is fifty dollars per month.
 - b. The fee for a non-self-issuing interstate permit is ten dollars per trip.
 - c. The fee for special mobile equipment is twenty-five dollars per trip.
 - d. The fee for engineering is twenty-five dollars per trip.
 - e. The fee for filing a permit is five dollars per trip.
 - f. The fee for a single trip permit is twenty dollars per trip.
3. The director of tax equalization of the county of destination must be furnished a copy of the permit for the movement of an overdimensional mobile home.

¹⁰ **SECTION 10. AMENDMENT.** Section 54-06-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-06-09. Mileage and travel expense of state officers and employees.

1. State officials, whether elective or appointive, and their deputies, assistants, and clerks, or other state employees, entitled by law to be reimbursed for mileage or travel expense, must be allowed and paid for mileage and travel expense the following amounts:
 - a. The sum of twenty-five cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when such travel is by motor vehicle or twenty-seven cents per mile [1.61 kilometers] if the travel is by truck, the use of which is required by the employing subdivision, agency, bureau, board, or commission. The sum of thirty-five cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when such travel is by private airplane. Mileage by private aircraft must be computed by actual air mileage when only one state employee or official is traveling; if two or more state employees or officials are traveling by private aircraft, the actual mileage must be based on the road mileage between the geographical points. Reimbursement for private airplane travel must be calculated as follows:

¹⁰ Section 54-06-09 was also amended by section 2 of Senate Bill No. 2056, chapter 435.

- a.
 - (1) If reimbursement is for one properly authorized and reimbursable passenger, reimbursement must be paid on a per-mile basis as provided in this subsection.
 - (2) If reimbursement is claimed for a chartered private aircraft, reimbursement may not exceed the cost of regular coach fare on a commercial flight, if one is scheduled between the point of departure, point of destination, and return, for each properly authorized and reimbursable passenger on the charter flight; or, where there is no such regularly scheduled commercial flight, the actual cost of the charter.
 - b. Except as provided in subdivision a, when travel is by rail or certificated air taxi commercial operator or other common carrier, including regularly scheduled flights by airlines, the amount actually and necessarily expended therefor in the performance of official duties.
2. No reimbursement may be paid for leased private aircraft, except for leased or rented private aircraft from a recognized fixed base aviation operator who is in the business of leasing and renting private aircraft and is located on an airport open for public use.
 3. If only one person ~~shall engage~~ engages in such travel in a motor vehicle exceeding at any geographical point one hundred fifty miles [241.40 kilometers] beyond the borders of this state, reimbursement must be limited to eighteen cents per mile [1.61 kilometers] for the out-of-state portion of the travel beyond the first one hundred fifty miles [241.40 kilometers].
 4. An official, deputy, assistant, clerk, or other employee, when required to travel by motor vehicle or truck in the performance of official duty, shall use a state-owned vehicle whenever possible unless exempted under section 24-02-03.3. When official travel is by motor vehicle or airplane owned by the state or by any department or political subdivision thereof, no allowance may be made or paid for such mileage.
2. ~~Except as provided in subsection 4, when travel is by rail or certificated air taxi commercial operator or other common carrier, including regularly scheduled flights by airlines, the amount actually and necessarily expended therefor in the performance of official duties.~~
3.
 5. Notwithstanding the other provisions of this section, state employees permanently located outside the state or on assignments outside the state for an indefinite period of time, exceeding at least thirty consecutive days, must be allowed and paid twenty-five cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when such travel is by motor vehicle, and the one-hundred-fifty-mile [241.40-kilometer] restriction imposed by subsection 4 3 does not apply.
 6. Before any allowance for any such mileage or travel expenses may be made, the official, deputy, assistant, clerk, or other employee shall file with the employee's department, institution, board, commission, or agency an itemized statement showing the mileage traveled, the hour of departure and return, the days when and how traveled, the purpose

thereof, and such other information and documentation as may be prescribed by rule of the employee's department, institution, board, commission, or agency. The statement must be submitted to the employee's department, institution, board, commission, or agency for approval and must be paid only when approved by the employee's department, institution, board, commission, or agency.

¹¹ **SECTION 11. REPEAL.** Section 24-02-37.1 of the 1995 Supplement to the North Dakota Century Code is repealed.

SECTION 12. EFFECTIVE DATE. Section 11 of this Act becomes effective on July 1, 1999.

Approved April 10, 1997
Filed April 10, 1997

¹¹ Section 24-02-37.1 was amended by section 8 of Senate Bill No. 2012, chapter 41, and amended by section 15 of Senate Bill No. 2052, chapter 432.

CHAPTER 42

SENATE BILL NO. 2013 (Appropriations Committee) (At the request of the Governor)

COMMISSIONER OF UNIVERSITY AND SCHOOL LANDS

AN ACT to provide an appropriation for defraying the expenses of the commissioner of university and school lands; to provide for a coal development impact loan to Oliver County; and to amend and reenact section 15-03-04 of the North Dakota Century Code, relating to investments by the board of university and school lands.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated from special funds derived from the state lands maintenance fund and the lands and minerals trust fund in the state treasury, not otherwise appropriated, and from other income to the commissioner of university and school lands for the purpose of defraying the expenses of the commissioner of university and school lands, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Assets management	\$2,463,790
Energy development impact office	<u>5,000,000</u>
Total special funds	\$7,463,790

SECTION 2. OIL AND GAS IMPACT GRANT FUND. The amount of \$5,000,000, or so much of the amount as may be necessary, included in the total special funds appropriated in section 1 of this Act may be spent from the oil and gas impact grant fund by the commissioner of university and school lands for the purpose of providing oil and gas development impact grants and the administration of the oil and gas development impact grant program for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 3. GRANTS. Section 54-44.1-11 does not apply to appropriations made for oil impact grants in section 1 of this Act nor to the appropriation for coal impact grants in chapter 733 of the 1989 Session Laws.

SECTION 4. LINE ITEM TRANSFERS. Upon approval of the emergency commission, the commissioner of university and school lands may transfer between various line items in section 1 of this Act appropriation authority of up to ten percent of a given line item to adjust for changing circumstances in meeting established performance measures. Any further transfers must be approved by the budget section.

SECTION 5. COAL DEVELOPMENT IMPACT LOAN TO OLIVER COUNTY. During the 1997-99 biennium, the board of university and school lands shall make a loan, pursuant to section 57-62-03, of up to \$300,000 at an annual interest rate of two percent, to Oliver County for the purpose of providing funding

for road improvements on the public road from state highway 25 to the Baukol-Noonan, Incorporated, facility.

SECTION 6. AMENDMENT. Section 15-03-04 of the North Dakota Century Code is amended and reenacted as follows:

15-03-04. Legal investments. Subject to the provisions of section 15-03-05, the board of university and school lands shall apply the prudent investor rule in investing the permanent funds under its control. The "prudent investor rule" means that in making investments the board shall exercise the same judgment and care, under the circumstances then prevailing and limitations of North Dakota and federal law, that an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments entrusted to it, not in regard to speculation but in regard to the permanent disposition of funds, considering probable safety of capital as well as probable income. Notwithstanding any investments made before to July 1, 1997, the board may not use any funds entrusted to it to purchase, as sole owner, commercial or residential real property in North Dakota without prior approval of the legislative assembly or the budget section of the legislative council.

Approved April 9, 1997

Filed April 10, 1997

CHAPTER 43

SENATE BILL NO. 2014 (Appropriations Committee) (At the request of the Governor)

CHILDREN'S SERVICES COORDINATING COMMITTEE

AN ACT to provide an appropriation for defraying the expenses of the children's services coordinating committee; to create and enact a new section to chapter 54-56 of the North Dakota Century Code, relating to regional and tribal children's services coordinating committees; to amend and reenact sections 54-56-01, 54-56-03, and 54-56-04 of the North Dakota Century Code, relating to the membership and duties of the children's services coordinating committee; and to repeal section 54-56-05 of the North Dakota Century Code, relating to the children's services coordinating committee receiving and spending funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated from special funds derived from federal funds and other income to the children's services coordinating committee for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Salaries and wages	\$ 66,243
Operating expenses	83,757
Grants	<u>5,479,756</u>
Total special funds appropriation	\$5,629,756

SECTION 2. GRANTS. Of the \$5,479,756 appropriated in the grants line item in section 1 of this Act, the children's services coordinating committee shall provide a grant of \$150,000 to the partnership project that is providing services to children with serious emotional disorders in human service regions number two (Minot), five (Fargo), and seven (Bismarck) during the biennium beginning July 1, 1997, and ending June 30, 1999. Any other statewide grants distributed by the committee, unless specifically approved by the legislative assembly, are subject to budget section approval.

SECTION 3. ADDITIONAL INCOME. All income of the children's services coordinating committee in excess of the estimated income line item appropriated in section 1 of this Act is hereby appropriated to the children's services coordinating committee for the biennium beginning July 1, 1997, and ending June 30, 1999, and may be spent only upon authorization of the emergency commission.

SECTION 4. LEGISLATIVE INTENT - FUNCTION OF REGIONAL AND TRIBAL CHILDREN'S SERVICES COORDINATING COMMITTEES. It is the intent of the legislative assembly that each regional and tribal children's services coordinating committee function as a regional planning committee to monitor and coordinate children's services in each region and that the regional and tribal children's services coordinating committees do not directly provide services or programs.

SECTION 5. LEGISLATIVE INTENT - PARTICIPATING ENTITIES. It is the intent of the legislative assembly that the department of human services inform eligible organizations that are not currently participating in "refinancing" activities of the benefits and the opportunity to participate in the program for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 6. LEGISLATIVE INTENT - REGIONAL CONSOLIDATION - REPORT TO BUDGET SECTION. It is the intent of the legislative assembly that because of relatively high administrative expenses as compared to income of some regional and tribal children's services coordinating committees, the Children's Services Coordinating Committee conduct an analysis and develop a plan to reduce, by consolidation, the administrative costs of the regional and tribal committees during the biennium beginning July 1, 1997, and ending June 30, 1999. The committee shall present its report and recommendations to the budget section by October 1, 1998.

SECTION 7. CHILDREN'S PROGRAMS - ACTION IF FEDERAL FUNDS ARE DISCONTINUED. A state agency administering a program affecting children which is anticipated to receive federal funds for the program for the 1995-97 biennium shall discontinue providing services of the program to the extent that federal funds are not available for the program for the biennium beginning July 1, 1997, and ending June 30, 1999, unless the legislative assembly has specifically identified funds to replace the federal funds.

SECTION 8. FEDERAL FUND ALLOCATIONS. Of the \$6,000,000 of federal funds estimated to be generated as a result of participating entities claiming federal administrative cost reimbursements through the department of human services, the following allocations are made for the biennium beginning July 1, 1997, and ending June 30, 1999:

AGENCY/ORGANIZATION	ALLOCATION
Department of human services	10 percent
Children's services coordinating committee - Administration	2.5 percent
Children's services coordinating committee - Grants to regional and tribal children's services coordinating committees for administrative costs	\$1,080,000 (estimated at 18 percent)
Regional and tribal children's services coordinating committees - Grants, including those to participating entities	62 percent, includes 20 percent that is returned to participating entities
Children's services coordinating committee - Statewide grants	7.5 percent

If less than \$6,000,000 is generated as a result of participating entities claiming federal administrative cost reimbursements for the 1997-99 biennium, the children's services coordinating committee shall proportionately reduce the percentage allocations for statewide grants and regional and tribal children's services coordinating committee grants to generate the funds necessary to provide a total of \$1,080,000 for the 1997-99 biennium for grants to regional and tribal committees for administrative costs under this section. Any federal funds received by the state as a result of participating entities claiming federal administrative cost reimbursements through the department of human services in excess of \$6,000,000 for the biennium beginning July 1, 1997, and ending June 30, 1999, must be distributed, subject to emergency commission approval, as follows:

AGENCY/ORGANIZATION	ALLOCATION
Regional and tribal children's services coordinating committees - Grants, including those to participating entities	90 percent, includes 20 percent that is returned to participating entities
Children's services coordinating committee - Statewide grants	10 percent

¹² **SECTION 9. AMENDMENT.** Section 54-56-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-56-01. Children's services coordinating committee - Membership. The children's services coordinating committee ~~is hereby established and~~ consists of the governor or a designee of the governor, ~~the attorney general or a designee of the attorney general, the commissioner of the board of higher education or a designee of the commissioner,~~ the superintendent of public instruction, a representative of juvenile courts appointed by the chief justice of the supreme court, the executive director of the department of human services, the state health officer, ~~the executive director of job service North Dakota or a designee of the executive director,~~ the director of the department of corrections and rehabilitation, or a designee of the director of the department of corrections and rehabilitation, ~~the director of the office of management and budget, or a designee of the director of the office of management and budget,~~ the director of vocational and technical education, ~~the chairperson of the governor's committee on children and youth or that chairperson's designee,~~ and a representative of the Indian affairs commission; a designee of the chief justice; ~~and a member at large to be appointed by the governor.~~ The governor or the governor's designee shall act as chairperson.

SECTION 10. AMENDMENT. Section 54-56-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-56-03. Functions.

1. The committee ~~shall~~ may:
 - a. Plan for and coordinate delivery of services to children and adolescents who are abused, neglected, emotionally disturbed, mentally ill, medically disabled, runaways, homeless, deprived, school dropouts, school-age parents, chemical or alcohol abusers, unruly, or delinquent.
 - b. ~~Foster preventive strategies and early intervention to strengthen families in their capacity to parent children~~ primary prevention ideas and strategies and present those ideas and strategies to regional or tribal children's services coordinating committees.
2. The committee ~~may coordinate, sponsor, or oversee interagency or intergovernmental projects and programs for children, or projects and programs that require the participation of both governmental and private entities~~ shall:

¹² Section 54-56-01 was also amended by section 39 of Senate Bill No. 2046, chapter 51.

- a. Distribute funds due to regional or tribal committees within five days of receiving the funds.
- b. Distribute its grant funds appropriated or authorized by the legislative assembly to children's services organizations and programs, subject to specific approval by the legislative assembly or the budget section. No funds, grants, gifts, or services of an organization receiving funds distributed by the committee may be used for the purposes of direct provision of contraception services, abortion, or abortion referrals to minors.

SECTION 11. AMENDMENT. Section 54-56-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-56-04. Charter public corporations - Duties. The children's services coordinating committee may ~~charter public corporations or~~ designate up to twelve organizations to serve as regional and tribal children's services coordinating committees to ~~implement programs for the classes of children and programs described in section 54-56-03~~ distribute grants received from the children's services coordinating committee. The committee shall prescribe conditions for the creation, continuance, and duration of those ~~corporations or~~ designations. The committee shall ~~discontinue the designation of regional and tribal committees if grant funds are not available for distribution to the regional and tribal committees.~~

SECTION 12. A new section to chapter 54-56 of the North Dakota Century Code is created and enacted as follows:

Regional or tribal children's services coordinating committee - Functions. A regional or tribal children's services coordinating committee, if established, must be composed of community volunteers and must maintain its own records. To foster and nurture the broadest base of community support and participation, at least one-third of regional or tribal committee members must be from the private sector. A regional or tribal committee shall:

1. Recruit local organizations to become participating entities to claim federal administrative cost reimbursements through the department of human services.
2. Expend administrative funding received from the state children's services coordinating committee only for costs associated with salaries and benefits, mileage and travel, meals, conferences and workshops, contract services, telephone, office supplies, marketing, printing, postage, dues and subscriptions, and room rent.
3. Reimburse a committee member only for expenses that are not reimbursed by the organization or entity that the member is representing on the regional or tribal committee.
4. Submit all claims received from its participating entities claiming federal administrative cost reimbursements to the department of human services within ninety days of the end of each calendar quarter.
5. Distribute twenty percent of the federal funds generated as a result of a participating entity claiming federal administrative cost reimbursements through the department of human services to the participating entity that generated the federal administrative cost reimbursement.

6. Distribute funds due to participating entities within twenty days of receiving the funds.

A regional or tribal committee may not maintain an unobligated fund balance, excluding income received during the final thirty days of each fiscal year, which exceeds fifty thousand dollars or twenty percent of annual gross income, whichever is less, at the end of each fiscal year.

SECTION 13. REPEAL. Section 54-56-05 of the North Dakota Century Code is repealed.

Approved April 10, 1997

Filed April 10, 1997

CHAPTER 44

SENATE BILL NO. 2015

(Appropriations Committee)
(At the request of the Governor)

INDUSTRIAL COMMISSION

AN ACT to provide an appropriation for defraying the expenses of the state industrial commission and the agencies under the management of the state industrial commission; to provide a continuing appropriation; to authorize transfers; to create and enact section 54-17.4-09.1 of the North Dakota Century Code, relating to a fossil excavation and restoration fund; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state industrial commission and agencies under its control for the purpose of defraying the expenses of their various divisions, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Subdivision 1.

INDUSTRIAL COMMISSION

Salaries and wages	\$ 5,329,672
Operating expenses	1,592,389
Equipment	118,600
Grants	13,430,280
Administrative contingency	10,000
Bond payments	<u>16,562,392</u>
Total all funds	\$37,043,333
Less estimated income	<u>16,348,169</u>
Total general fund appropriation	\$20,695,164

Subdivision 2.

BANK OF NORTH DAKOTA - OPERATIONS

Salaries and wages	\$13,461,681
Operating expenses	10,259,629
Equipment	1,454,000
Capital improvements	270,000
Contingency	<u>485,339</u>
Total appropriation from Bank of North Dakota fund	\$25,930,649

Subdivision 3.

BANK OF NORTH DAKOTA - ECONOMIC DEVELOPMENT

Partnership in assisting community expansion fund	\$ 4,600,000
Agriculture partnership in assisting community expansion fund	397,100
Beginning farmer	<u>921,500</u>
Total general fund appropriation	\$ 5,918,600

Subdivision 4.

MILL AND ELEVATOR ASSOCIATION

Salaries and wages	\$ 12,007,663
Operating expenses	7,134,539
Contingency	250,000
Agriculture promotion	50,000
Total appropriation from mill and elevator fund	<u>\$ 19,442,202</u>

Subdivision 5.

HOUSING FINANCE AGENCY

Salaries and wages	\$ 2,406,081
Operating expenses	1,351,816
Equipment	75,000
Grants	22,014,860
Contingency	100,000
Total appropriation from housing finance agency fund	<u>\$ 25,947,757</u>
Grand total general fund appropriation S.B. 2015	\$ 26,613,764
Grand total special funds appropriation S.B. 2015	\$ 87,668,777
Grand total all funds appropriation S.B. 2015	\$114,282,541

SECTION 2. APPROPRIATION. In addition to the amount appropriated to the housing finance agency in subdivision 5 of section 1 of this Act, there is hereby appropriated any additional income from federal or other funds which may become available to the agency for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 3. APPROPRIATION. In addition to the amount appropriated to the industrial commission in subdivision 1 of section 1 of this Act, there is hereby appropriated, with the approval of the emergency commission, funds which may become available to the commission from bonds authorized by law to be issued by the industrial commission under chapters 4-36 and 54-17.3 and section 54-17-25, for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 4. TRANSFER. The sum of \$65,340, or so much of the sum as may be necessary, included in the special funds appropriation line item in subdivision 1 of section 1 of this Act, is from the North Dakota mill and elevator association. The moneys must be transferred during the biennium beginning July 1, 1997, and ending June 30, 1999, upon order of the industrial commission.

SECTION 5. TRANSFER. The sum of \$85,226, or so much of the sum as may be necessary, included in the special funds appropriation line item in subdivision 1 of section 1 of this Act, is from the accumulated and undivided profits of the Bank of North Dakota. The moneys must be transferred during the biennium beginning July 1, 1997, and ending June 30, 1999, upon order of the industrial commission.

SECTION 6. TRANSFER. The sum of \$56,817, or so much of the sum as may be necessary, included in the special funds appropriation line item in subdivision 1 of section 1 of this Act, is from the housing finance agency fund. The moneys must be transferred during the biennium beginning July 1, 1997, and ending June 30, 1999, upon order of the industrial commission.

SECTION 7. TRANSFER. The sum of \$19,886, or so much of the sum as may be necessary, included in the special funds appropriation line item in subdivision 1 of section 1 of this Act, is from the revenues of the municipal bond bank. The available moneys must be transferred during the biennium beginning July 1, 1997, and ending June 30, 1999, upon order of the industrial commission.

SECTION 8. INCOME AUTHORIZATION - STUDENT LOAN TRUST.

There is hereby authorized the receipt of fees by the industrial commission in the sum of \$56,817, or so much of the sum as is owed, included in the special funds appropriation line item in subdivision 1 of section 1 of this Act, from the student loan trust for administrative services rendered by the industrial commission to the extent permitted by sections 54-17-24 and 54-17-25. The fees must be received during the biennium beginning July 1, 1997, and ending June 30, 1999, upon order of the industrial commission.

SECTION 9. TRANSFER. The industrial commission shall transfer to the general fund in the state treasury, the sum of \$2,000,000 from the North Dakota mill and elevator association. The moneys must be transferred in amounts and at such times as requested by the director of the office of management and budget during the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 10. LIGNITE RESEARCH, DEVELOPMENT, AND MARKETING PROGRAM - APPROPRIATION - LIGNITE MARKETING FEASIBILITY STUDY. The amount of \$400,000, or so much of the amount as may be necessary, included in the grants and special funds appropriation line items in subdivision 1 of section 1 of this Act, is from the lignite research fund for the purpose of contracting for an independent, nonmatching lignite marketing feasibility study or studies that determine those focused priority areas where near-term, market-driven projects, activities, or processes will generate matching private industry investment and have the most potential of preserving existing lignite production and jobs or that will lead to increased development of lignite and its products and create new jobs and economic growth for the general welfare of this state. Moneys appropriated pursuant to this section may also be used for the purpose of contracting for nonmatching externality studies and activities for the lignite industry and the state in externality proceedings or funding for the development and implementation of a regional marketing plan. Moneys not needed for the purposes stated herein are available to the commission for funding projects, processes, or activities under the lignite research, development, and marketing program.

SECTION 11. LEGISLATIVE INTENT - LEASE PAYMENTS. The amount of \$16,562,392 included in subdivision 1 of section 1 of this Act in the bond payments line item must be paid from the following funding sources during the biennium beginning July 1, 1997, and ending June 30, 1999:

Higher education institutions	\$ 1,090,590
General fund	14,688,383
Job service North Dakota	361,290
Federal portion for southeast human service center	154,507
Veterans' home improvement fund	<u>267,622</u>
Total	\$16,562,392

SECTION 12. Section 54-17.4-09.1 of the North Dakota Century Code is created and enacted as follows:

54-17.4-09.1. Fossil excavation and restoration fund - Continuing appropriation. A special fund known as the fossil excavation and restoration fund must be maintained in the state treasury. Funds received by the geological survey for the excavation and restoration of fossils must be deposited in the fund. All moneys in the fund are appropriated on a continuing basis to the geological survey for the purpose of excavation and restoration of fossils. The provisions of section 54-27-10 do not apply to appropriations from this fund.

SECTION 13. APPROPRIATION - TRANSFER. The funds appropriated by subdivision 3 of section 1 of this Act must be transferred by the Bank of North Dakota to the partnership in assisting community expansion fund established by section 6-09.14-02; the agricultural partnership in assisting community expansion fund established by section 6-09.13-04; and the beginning farmer loan fund established by section 6-09-15.5, in the amounts set out in that subdivision. The Bank of North Dakota may not be construed to be a general fund agency as a result of the appropriation made by subdivision 3 of section 1 of this Act.

SECTION 14. EMERGENCY. Section 12 of this Act is declared to be an emergency measure.

Approved April 10, 1997

Filed April 10, 1997

CHAPTER 45

SENATE BILL NO. 2016

(Appropriations Committee)
(At the request of the Governor)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

AN ACT to provide an appropriation for defraying the expenses of the department of corrections and rehabilitation; to create and enact a new section to chapter 15-40.1 and a new subsection to section 15-40.2-08 of the North Dakota Century Code, relating to payment of tuition in cases of residential placements and to the transfer of funds appropriated for foundation aid; to provide legislative intent; to propose a legislative council study; to provide a contingent payment; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of corrections and rehabilitation for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Subdivision 1.

CENTRAL OFFICE

Salaries and wages	\$ 798,494
Operating expenses	73,713
Equipment	4,400
Total all funds	\$ 876,607
Less estimated income	98,899
Total general fund appropriation	\$ 777,708

Subdivision 2.

JUVENILE SERVICES

Salaries and wages	\$ 8,708,389
Operating expenses	3,927,066
Equipment	102,879
Capital improvements	573,000
Grants	1,280,000
Delinquency prevention consortium	100,000
Institutional medical fees	50,000
Total all funds	\$14,741,334
Less estimated income	5,456,447
Total general fund appropriation	\$ 9,284,887

Subdivision 3.

ADULT SERVICES

Salaries and wages	\$20,252,555
Operating expenses	8,879,128
Equipment	170,867
Capital improvements	1,010,650
Capital improvements - medium security facility	4,896,425
Institutional medical fees	850,000
Victim services	3,104,399
Institutional offender services	321,991
Community offender services	6,164,499
Total all funds	\$45,650,514
Less estimated income	10,483,117
Total general fund appropriation	\$35,167,397

Subdivision 4.

ROUGH RIDER INDUSTRIES

Salaries and wages	\$ 2,427,773
Operating expenses	5,951,678
Equipment	221,000
Capital improvements	86,112
Total special funds	\$ 8,686,563
Grand total general fund appropriation S.B. 2016	\$45,229,992
Grand total special funds appropriation S.B. 2016	\$24,725,026
Grand total all funds appropriation S.B. 2016	\$69,955,018

SECTION 2. TRANSFER AUTHORITY. Upon approval of the budget section, the director of the department of corrections and rehabilitation may transfer appropriation authority contained in the various subdivisions in section 1 of this Act.

SECTION 3. LINE ITEM TRANSFERS. Upon approval of the emergency commission, the department of corrections and rehabilitation may transfer between the victim services, institutional offender services, and community offender services line items in subdivision 3 of section 1 of this Act appropriation authority of up to ten percent of a given line item to adjust for changing circumstances in meeting established performance measures. Any further transfers must be approved by the budget section.

SECTION 4. STATE PENITENTIARY LAND FUND. The amount appropriated for capital improvements in subdivisions 2 and 3 of section 1 of this Act includes \$382,300 and \$490,400, respectively, which is from the North Dakota state penitentiary land fund for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 5. A new section to chapter 15-40.1 of the North Dakota Century Code is created and enacted as follows:

Transfer of funds prohibited. The superintendent of public instruction may not transfer any portion of the funds appropriated for foundation aid to the youth correctional center to support the provision of educational services by the youth correctional center.

SECTION 6. A new subsection to section 15-40.2-08 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

Notwithstanding the provisions of this section, educational services provided to a student by the youth correctional center are not subject to

the payment of tuition by either the student's school district of residence or the superintendent of public instruction.

SECTION 7. LEGISLATIVE INTENT - CRIME VICTIMS GRANTS. It is the intent of the fifty-fifth legislative assembly that any grants distributed by the parole and probation division of the department of corrections and rehabilitation for victims services include a notice provided to grant recipients that the amount of funds appropriated for crime victims' grants for the 1997-99 biennium may not continue at the same level during the 1999-2001 biennium. The fifty-sixth legislative assembly is not obligated to provide an appropriation from the state general fund to continue the crime victims' grant program at the 1997-99 biennium level.

SECTION 8. LEGISLATIVE INTENT - ROUGHRIDER INDUSTRIES CAPITAL CONSTRUCTION. It is the intent of the fifty-fifth legislative assembly that the funds appropriated in the capital improvements - medium security facility line item in subdivision 3 of section 1 of this Act include \$325,013 of federal funds and \$36,112 of other funds derived from roughrider industries' operations for the construction of a building at the proposed medium security correctional facility to be used by roughrider industries for the employment of inmates at that facility.

SECTION 9. PURCHASE OF LAND AND BUILDINGS - EXEMPTION FROM CHAPTERS 48-01.1 AND 54-44.7. The department of corrections and rehabilitation may purchase, within the limits of legislative appropriations provided for that purpose, the forensic unit building, the extended treatment building, a gymnasium building, and surrounding real property at the state hospital for development of a medium security correctional facility. The department of corrections and rehabilitation is not subject to the provisions of chapters 48-01.1 and 54-44.7, relating to public improvement contract bids and architect, engineer, and land surveying services, for construction and renovation relating to the medium security correctional facility.

SECTION 10. DELINQUENCY PREVENTION CONSORTIUM AND LEGISLATIVE COUNCIL STUDY. During the 1997-99 biennium, the department of corrections and rehabilitation, the department of human services, and the department of public instruction shall develop a delinquency prevention consortium, including representatives of those departments, other state agencies, and private organizations. The legislative council shall consider studying, during the 1997-99 biennium, programs to prevent crime and delinquency and reduce incarceration. If the legislative council conducts such a study, the delinquency prevention consortium shall work in cooperation with the legislative council. The study shall consider crime prevention programs other than incarceration, such as the following programs identified in the 1996 research report "Diverting Children from a Life of Crime - Measuring Costs and Benefits": early childhood interventions for children at risk of developing antisocial behavior, interventions for families with children exhibiting aggressive or antisocial behavior, providing graduation incentives for disadvantaged high school students, and early monitoring of youth exhibiting delinquent behavior. The legislative council may report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-sixth legislative assembly. If, during the 1997-99 biennium, the legislative council does not study programs to prevent crime and delinquency and reduce incarceration, the delinquency prevention consortium shall complete such a study and present periodic reports to the legislative council or its designated committee during the 1997-99 biennium on its findings and recommendations.

SECTION 11. LEGISLATIVE INTENT - YOUTH CORRECTIONAL CENTER CARPENTRY PROGRAM. It is the intent of the fifty-fifth legislative

assembly that the department of corrections and rehabilitation use the funds appropriated in section 1 of this Act to continue the carpentry program at the youth correctional center during the 1997-99 biennium.

SECTION 12. CONTINGENT PAYMENT. If, as of December 31, 1998, the superintendent of public instruction determines that a portion of the amount appropriated in the grants - foundation aid and transportation line item in House Bill No. 1013 will not be distributed during the 1997-99 biennium, the superintendent shall provide a payment, in addition to any other payments required by law, equal to the estimated undistributed amount, up to \$350,000, to the youth correctional center for educational costs incurred during the 1997-99 biennium. If the amount of the payment is less than \$350,000, the department of corrections and rehabilitation shall request a deficiency appropriation from the fifty-sixth legislative assembly for the amount that when added to the amount of the payment will equal \$350,000.

SECTION 13. EFFECTIVE DATE. Section 5 of this Act is effective on July 1, 1999.

SECTION 14. EMERGENCY. The capital improvements - medium security facility line item in subdivision 3 of section 1 of this Act and section 9 of this Act are declared to be an emergency measure.

Approved April 17, 1997

Filed April 17, 1997

CHAPTER 46

SENATE BILL NO. 2017

(Appropriations Committee)
(At the request of the Governor)

JOB SERVICE NORTH DAKOTA

AN ACT to provide an appropriation for defraying the expenses of job service North Dakota; to provide that job service North Dakota and the workers compensation bureau conduct mutual auditing assistance; to create and enact a new section to chapter 44-04 and a new section to chapter 52-02 of the North Dakota Century Code, relating to records of the North Dakota occupational information coordinating committee and audits of job service North Dakota; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to job service North Dakota for the purpose of defraying its expenses, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Salaries and wages	\$31,989,975
Operating expenses	8,246,905
Equipment	483,766
Capital improvements	446,976
Grants	7,811,918
Work Force 2000	1,850,754
New jobs program	83,261
Total all funds	<u>\$50,913,555</u>
Less estimated income	<u>49,062,801</u>
Total general fund appropriation	<u>\$ 1,850,754</u>

SECTION 2. APPROPRIATION. All federal funds received by job service North Dakota in excess of those funds appropriated in section 1 of this Act are hereby appropriated to job service North Dakota for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 3. WORK FORCE 2000 ALLOCATIONS. For the year beginning July 1, 1997, a minimum of \$150,000, of the \$1,850,754 provided for work force 2000, is to be available for projects in areas in the state that are not within five miles [8.05 kilometers] of any city with a population of more than eight thousand. Any work force 2000 funds remaining after June 30, 1998, may be used for projects in any area of the state.

SECTION 4. WORKERS COMPENSATION BUREAU AND JOB SERVICE NORTH DAKOTA - MUTUAL AUDITING ASSISTANCE. The workers compensation bureau and job service North Dakota shall establish a cooperative program under which each agency, during the performance of employer audits, gathers employer audit information relevant to the other agency. The workers compensation bureau shall coordinate training of the auditors of both

agencies on the technical aspects and needs of the audit processes. The training must include training on the use of the form developed under section 2 of chapter 523 of the 1995 Session Laws for reporting workers' compensation and job service information on a single form. Training must be completed by December 31, 1997. The auditing program must begin in January 1998. The program must operate within federal funding requirements and any other applicable federal statutes and regulations affecting job service North Dakota, as well as within titles 52 and 65. The program's agreement must identify the amount and method of reimbursement between the workers compensation bureau and job service North Dakota for the mutual auditing services. The agreement also must identify a means by which the agencies will identify the employers to be audited by each to avoid a duplication of efforts by the agencies and to reduce the administrative burden on employers subject to the audits.

SECTION 5. A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

Certain records of occupational information coordinating committee - Exempt. Records provided to the North Dakota occupational information coordinating committee by any person for use in the followup information on North Dakota education and training system for research or statistical purposes may only be used to prepare aggregate data compilations that do not identify any individual and may not be disclosed to the public by the occupational information coordinating committee. A request for disclosure of the records under section 44-04-18 or section 6 of article XI of the Constitution of North Dakota must be directed to the person or entity that has provided the records to the occupational information coordinating committee.

SECTION 6. A new section to chapter 52-02 of the North Dakota Century Code is created and enacted as follows:

Independent audit. The state auditor shall appoint on a biennial basis an independent audit firm, with extensive expertise in job service practices and standards, to complete a performance audit of the divisions of job service North Dakota. The audit must evaluate divisions of job service North Dakota, as determined necessary by the state auditor, to determine whether the divisions are providing quality service in an efficient and cost-effective manner. The audit report must contain recommendations for divisional improvement or an explanation of why no recommendations are being made. The executive director of job service North Dakota and the auditor shall present the audit report and any action taken as a result of the audit to the legislative council's legislative audit and fiscal review committee and to the house and senate industry, business and labor standing committees during the next regular session of the legislative assembly following the audit. The executive director shall also provide a copy of the audit report to the state auditor.

SECTION 7. EMERGENCY. Section 5 of this Act is declared to be an emergency measure.

Approved April 17, 1997
Filed April 17, 1997

CHAPTER 47

SENATE BILL NO. 2018

(Appropriations Committee)
(At the request of the Governor)

OFFICE OF ADMINISTRATIVE HEARINGS

AN ACT to provide an appropriation for defraying the expenses of the office of administrative hearings; to create and enact a new section to chapter 54-57 of the North Dakota Century Code, relating to hearings by the office of administrative hearings; and to amend and reenact subsections 1 and 2 of section 54-57-07 of the North Dakota Century Code, relating to payment for administrative hearings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys from special funds derived from billing agencies for services, to the office of administrative hearings for the purpose of defraying its expenses, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Salaries and wages	\$ 622,310
Operating expenses	707,251
Equipment	<u>20,600</u>
Total special funds appropriation	\$1,350,161

SECTION 2. OFFICE OF ADMINISTRATIVE HEARINGS - LOAN FROM STATE GENERAL FUND - APPROPRIATION OF LOAN REPAYMENT. Notwithstanding any other provision of law, the office of administrative hearings is authorized to borrow up to \$100,000, which amounts are hereby appropriated from the state general fund during the biennium beginning July 1, 1997, and ending June 30, 1999. The office of administrative hearings shall inform the office of management and budget of any loan required pursuant to this section. Any loan made to the office of administrative hearings under this section must be repaid to the state general fund by June 30, 1999, and any loan repayments made by the office of administrative hearings are hereby appropriated for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 3. A new section to chapter 54-57 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

Hearings after judgment. The office of administrative hearings may not hold hearings on the same issue involving the same parties as the original hearing after a judgment has been rendered by a court concerning that issue unless authorized to or directed to by that court.

¹³ **SECTION 4. AMENDMENT.** Subsections 1 and 2 of section 54-57-07 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. The office of administrative hearings ~~may~~ shall require payment for services rendered by any administrative law judge provided by it to any agency, to any unit of local government in this state, to any tribal government in this state, or to the judicial branch, in the conduct of an administrative hearing and related proceedings, and those entities must make the required payment to the office. Payment ~~may~~ must include payment for support staff necessary to render administrative law judge services. ~~General fund moneys may not be used for payment by state agencies pursuant to this subsection except for those payments required of the department of human services and the state department of health.~~ Moneys received by the office of administrative hearings in payment for providing an administrative law judge to conduct an administrative hearing and related proceedings must be deposited into the operating fund of the office of administrative hearings.
2. The office of administrative hearings ~~may~~ shall require payment for mileage, meals, and lodging in connection with services rendered by an administrative law judge provided to any agency, to any unit of local government in this state, to any tribal government in this state, or to the judicial branch, in the conduct of an administrative hearing and related proceedings, and those entities must make the required payment to the office. Payment for meals and lodging must be in the amounts allowable under section 44-08-04. Payment for mileage when using state vehicles must be in amounts set for user charges under section 24-02-03.5. All other payments must be in amounts allowed for other state officials and employees. Either general fund or special fund moneys, or other income, may be used for the payment of mileage, meals, and lodging under this subsection.

Approved April 11, 1997
Filed April 11, 1997

¹³ Section 54-57-07 was also amended by section 1 of Senate Bill No. 2084, chapter 469.

CHAPTER 48

SENATE BILL NO. 2019

(Appropriations Committee)
(At the request of the Governor)

ECONOMIC DEVELOPMENT AND FINANCE

AN ACT to provide appropriations for defraying the expenses of the department of economic development and finance and to the agricultural products utilization commission for grants; to provide for transfers of funds; to provide for the reallocation of funds; to provide for a legislative council study; to amend and reenact sections 4-14.1-03.1, 4-14.1-04, 54-34.3-08, and 57-43.1-03.1 of the North Dakota Century Code, relating to the agricultural products utilization commission, patent and royalty rights of the department of economic development and finance, and tax refunds for fuel used for agricultural purposes; to provide for application; to repeal chapter 10-30.4 and section 54-34.3-07 of the North Dakota Century Code, relating to technology transfer, incorporated; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of economic development and finance for the purpose of defraying its expenses, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Salaries and wages	\$ 2,421,849
Operating expenses	1,481,995
Equipment	34,000
Grants	1,313,141
General allocation grants	725,690
Technology transfer, incorporated	500,000
Agricultural products utilization	4,097,462
North Dakota development fund	1,909,875
Total all funds	<u>\$12,484,012</u>
Less estimated income	<u>3,312,026</u>
Total general fund appropriation	\$ 9,171,986

SECTION 2. APPROPRIATION. All income received in excess of the amounts appropriated in section 1 of this Act relating to agricultural products utilization commission activities is hereby appropriated to the agricultural products utilization commission for research, marketing, and utilization grants for the biennium beginning July 1, 1997, and ending June 30, 1999. Any funds received require the approval of the emergency commission before they may be expended.

SECTION 3. AGRICULTURAL FUEL TAX FUND. The estimated income line item in section 1 of this Act includes \$1,007,243 from the agricultural fuel tax fund for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 4. HIGHWAY TAX DISTRIBUTION FUND - ETHANOL PRODUCTION INCENTIVES - CONTINGENT TRANSFER. The estimated

income line item in section 1 of this Act includes \$1,507,000, or so much of the amount as may be necessary, from the highway tax distribution fund for the ethanol production incentive program. Of this amount, \$1,500,000 is for the purpose of providing production incentives to the Grafton, North Dakota, ethanol plant and \$7,000 is for audits of the use of these funds for the biennium beginning July 1, 1997, and ending June 30, 1999. Distribution from the appropriation in section 1 of this Act to the producers of agriculturally derived fuel must be at the rate of forty cents for each gallon of agriculturally derived fuel produced in the state which is marketed by the producing plant to a distributor or wholesaler for sale within North Dakota. For purposes of this section, "gallon of agriculturally derived fuel" means a gallon of fuel that qualifies for the alcohol credit under 26 U.S.C. 40, specifically including fuel to which a denaturant has been added. Payment to the producing plant must be approved by the agricultural products utilization commission upon presentation by the plant of an affidavit to the effect that the ethanol sold from the plant and for which the producer's credit is being sought is to be sold at retail to consumers in North Dakota. The affidavit of the producer of the ethanol must be accompanied by an affidavit from the wholesaler or retailer to the same effect. Within ninety days after the end of each fiscal year of the ethanol plant beginning after December 31, 1992, any North Dakota ethanol plant receiving production incentives from the state shall file with the budget section of the legislative council a statement, certified by a certified public accountant, as to whether the plant produced a profit from its operation in the preceding fiscal year, after deducting the payments received from this incentive program. If, at the end of each fiscal year, funding appropriated for ethanol incentive payments is not spent, the director of the office of management and budget shall transfer from the highway tax distribution fund the amount of unspent funds deposited into the fund pursuant to provisions of section 57-43.1-03.1 to the agricultural fuel tax fund for the agricultural products utilization commission for the purpose of providing grants as provided by law.

SECTION 5. EXEMPTION. The funds appropriated in the agricultural products utilization line item in section 1 of this Act are not subject to section 54-44.1-11 and any unexpended funds from this line item relating to grants awarded may be available for continued payment of grants awarded but not paid during the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 6. EXEMPTION - ETHANOL INCENTIVE APPROPRIATION. The funds provided in the ethanol incentive line item contained in chapter 48 of the 1995 Session Laws are not subject to the provisions of section 54-44.1-11 and any unexpended funds up to a maximum of \$250,000 from this line item are available for ethanol incentive payments to the Grafton ethanol plant during the biennium beginning July 1, 1997, and ending June 30, 1999. Notwithstanding the appropriation limit in section 4 of this Act, these funds shall be distributed based on the distribution formula contained in that section.

SECTION 7. LEGISLATIVE INTENT - ETHANOL INCENTIVE PAYMENTS. It is the intent of the legislative assembly that the appropriation of \$1,500,000 contained in section 1 of this Act for ethanol incentives and the \$250,000 of estimated unspent ethanol incentive funds from the 1995-97 biennium, to be available as a result of the exemption provided in section 6 of this Act, provide a total of \$1,750,000 for ethanol incentives for the Grafton ethanol plant during the biennium beginning July 1, 1997, and ending June 30, 1999. A maximum of \$875,000 may be paid annually to the Grafton ethanol plant during the 1997-99 biennium.

SECTION 8. REALLOCATION OF ECONOMIC DEVELOPMENT FUNDS. The director of the department of economic development and finance may

reallocate among the technology transfer, inc., fund and the North Dakota development fund for rural and nonrural development projects up to ten percent of the amounts appropriated for these purposes for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 9. TRANSFERS - ECONOMIC DEVELOPMENT FUNDS. Of the general fund amount appropriated in section 1 of this Act, \$500,000 must be transferred to the technology transfer fund and \$1,909,875 to the North Dakota development fund. The transfers must be in amounts and at such times as requested by the director of the office of management and budget.

SECTION 10. NORTH DAKOTA DEVELOPMENT FUND ALLOCATIONS. The \$1,909,875 transferred to the North Dakota development fund must be dedicated for projects as follows: forty percent businesses in rural areas, forty percent businesses in urban areas, and twenty percent North Dakota American Indian businesses. Any unused funds in any category may be transferred to another category during the second year of the biennium under rules adopted by the director of the department of economic development and finance. The director of the department of economic development and finance may reallocate up to twenty percent of any region's available remaining balance of regional rural development revolving loan funds to another region or regions for the biennium beginning July 1, 1997, and ending June 30, 1999. Of the amount available in the North Dakota development fund, \$4,000,000 or the unobligated balance on July 1, 1997, relating to the transfer of regional rural development revolving loan fund moneys, must continue to be dedicated for the purpose of providing financial assistance, research and development assistance, and loans or equity or debt financing on a matching basis to new or expanded primary sector businesses in areas of the state which are not within five miles [8.05 kilometers] of any city with a population of more than eight thousand. These funds must be allocated for the benefit of each of the areas delineated as regions by executive order of the governor pursuant to section 54-40.1-02.

SECTION 11. ECONOMIC DEVELOPMENT FUNDS - WAGE REQUIREMENTS. Any political subdivision or economic development authority may adopt a minimum wage requirement for any new business or business expansion in which a majority of the capital is provided by the North Dakota development fund and its own local development funds. These wage requirements may be imposed on all or any portion of the employees and may exceed federal minimum wage requirements.

SECTION 12. LEGISLATIVE COUNCIL STUDY - ECONOMIC DEVELOPMENT FUNCTIONS. The legislative council shall consider studying during the 1997-98 interim economic development functions in North Dakota including the Bank of North Dakota programs, technology transfer, incorporated, the North Dakota development fund, the department of economic development and finance, and other related state agencies. The study, if conducted, should include a review of the most appropriate, effective, and efficient method for the state to deliver economic development assistance in light of changing economic conditions and considerations.

SECTION 13. AMENDMENT. Section 4-14.1-03.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-14.1-03.1. Agricultural products utilization commission - Authority. The North Dakota agricultural products utilization commission may apply for, accept, and expend any appropriation, grant, gift, or service made available from public or

private sources consistent with the purpose of this chapter. The commission may administer grant programs consistent with the purpose of this chapter including a basic and applied research grant program, utilization and marketing grant program, cooperative marketing grant program, farm diversification grant program, agricultural prototype development grant program, and a North American marketing grant program.

SECTION 14. AMENDMENT. Section 4-14.1-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-14.1-04. Agricultural products utilization commission - Meetings - Personnel - Reports. The agricultural products utilization commission, which is a division of the department of economic development and finance, shall meet as necessary and shall report to each session of the legislative assembly. The commission may secure office space ~~and~~, employ needed personnel for the performance of its duties, ~~may~~ hire consultants, spend any funds appropriated to the commission, and ~~may~~ contract with public entities or private parties for services.

SECTION 15. AMENDMENT. Section 54-34.3-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-34.3-08. Patents. The department of economic development and finance, ~~technology transfer, incorporated,~~ the North Dakota development fund, incorporated, and the North Dakota agricultural products utilization commission may hold or assign for remuneration all or a portion of their interest in patents or royalty rights acquired in the course of their operation and performance of duties as provided by law.

¹⁴ **SECTION 16. AMENDMENT.** Section 57-43.1-03.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-03.1. (Effective until December 31, 1999) Refund of tax for fuel used for agricultural purposes - ~~Reduction for agricultural fuel tax fund~~ Reductions. Any person who buys or uses any motor vehicle fuel for agricultural purposes, except motor vehicle fuel used in motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state on which the motor vehicle fuel tax has been paid, must be reimbursed or repaid within the time provided in this chapter, the amount of the tax paid upon the presentation to and the approval of the commissioner of a claim for refund. The amount of the tax refund provided for in this section must be reduced by ~~four~~ seven cents per gallon [3.79 liters] except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users; ~~two~~. Two cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund ~~and two cents~~, one cent per gallon [3.79 liters] withheld from the refund must be retained in the highway tax distribution fund, and four cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural research fund. Those persons who have a valid tax assignment permit issued by the commissioner under section 57-43.1-11 must be charged ~~four~~ seven cents per gallon [3.79 liters] by the dealer and the ~~four~~ seven

¹⁴ Section 57-43.1-03.1 was also amended by section 1 of House Bill No. 1286, chapter 500, and section 3 of House Bill No. 1311, chapter 498.

cents charged must be remitted to the commissioner by the dealer when the dealer submits the tax assigned invoices for credit.

(Effective January 1, 2000) Refund of tax for fuel used for agricultural purposes - Reduction for agricultural fuel tax fund Reductions. Any person who buys or uses any motor vehicle fuel for agricultural purposes, except motor vehicle fuel used in motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state on which the motor vehicle fuel tax has been paid, must be reimbursed or repaid within the time provided in this chapter, the amount of the tax paid upon the presentation to and the approval of the commissioner of a claim for refund. The amount of the tax refund provided for in this section must be reduced by ~~two six~~ six cents per gallon [3.79 liters] except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users; ~~two~~ Two cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund and four cents per gallon [3.79 liters] withheld from the fund must be deposited in the agricultural research fund. Those persons who have a valid tax assignment permit issued by the commissioner under section 57-43.1-11 must be charged ~~two six~~ six cents per gallon [3.79 liters] by the dealer and the ~~two six~~ six cents charged must be remitted to the commissioner by the dealer when the dealer submits the tax assigned invoices for credit.

SECTION 17. APPLICATION. Section 16 of this Act applies to refund claims for motor vehicle fuel taxes paid after December 31, 1996.

SECTION 18. TECHNOLOGY TRANSFER, INCORPORATED, TRANSFERS. Any moneys and any investment, contract, partnership, or any other business transaction of technology transfer, incorporated, are transferred to the North Dakota development fund and are deemed to be assets of the North Dakota development fund.

SECTION 19. REPEAL. Chapter 10-30.4 of the North Dakota Century Code and section 54-34.3-07 of the 1995 Supplement to the North Dakota Century Code are repealed.

SECTION 20. EFFECTIVE DATE. Sections 15, 18, and 19 are effective on July 1, 1999.

Approved April 17, 1997
Filed April 17, 1997

CHAPTER 49

SENATE BILL NO. 2020 (Appropriations Committee) (At the request of the Governor)

BOARD FOR VOCATIONAL AND TECHNICAL EDUCATION

AN ACT to provide an appropriation for defraying the expenses of the state board for vocational and technical education; to create and enact a new subsection to section 15-20.1-03 of the North Dakota Century Code, relating to the powers and duties of the state board for vocational and technical education; to amend and reenact section 6-09.10-02.1, subsection 1 of section 6-09.10-06, sections 15-20.1-01, and 15-20.1-02 of the North Dakota Century Code, relating to the duties of the credit review board and the state board for vocational and technical education; and to provide statements of legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state board for vocational and technical education for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Salaries and wages	\$ 2,567,463
Operating expenses	555,204
Equipment	108,000
Grants	21,619,356
Adult farm management	445,760
Postsecondary education vocational grants	368,600
Small business management	99,237
Total all funds	\$25,763,620
Less estimated income	<u>14,247,597</u>
Total general fund appropriation	\$11,516,023

SECTION 2. AMENDMENT. Section 6-09.10-02.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.10-02.1. Additional duties of board. In addition to other powers and duties enumerated in this chapter, the board shall:

1. Establish policy for the North Dakota agricultural mediation service.
2. Recommend policies and procedures to the industrial commission regarding farm loan programs of the Bank of North Dakota.

3. Recommend policies and procedures regarding the adult farm management program to the state board ~~of~~ for vocational and technical education.
4. ~~Coordinate~~ Participate in a farm management delivery system coordinated by the state board for vocational and technical education among the adult farm management program, agricultural mediation service, and North Dakota state university. The system must be available to any farmer and may be funded from moneys available in the fund described in this chapter, fees paid by farmers, or other sources.

SECTION 3. AMENDMENT. Subsection 1 of section 6-09.10-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A revolving fund must be maintained at the Bank of North Dakota for the subsidy of interest rates on home-quarter purchases and coordination and operation of a farm management delivery system, as provided in this chapter. All moneys transferred into the fund, interest upon moneys in the fund, and payments to the fund are hereby appropriated for the purposes of this chapter. Any moneys generated by the farm management delivery system must be transferred to the state board for vocational and technical education and allocated by the state board for vocational and technical education to the adult farm management program, the agricultural mediation services, and North Dakota state university for expenses related to the jointly developed and implemented farm management delivery system. ~~The board may not allocate more than forty percent of these moneys to any one of these entities.~~

SECTION 4. AMENDMENT. Section 15-20.1-01 of the North Dakota Century Code is amended and reenacted as follows:

15-20.1-01. Definitions. In this chapter, unless the context ~~or subject matter~~ otherwise requires:

1. "Director" means the director of vocational and technical education.
2. "Regulations" means regulations made by the director with the approval of the state board.
3. "State board" means the state board for vocational and technical education ~~which is the state board of public school education.~~

SECTION 5. AMENDMENT. Section 15-20.1-02 of the North Dakota Century Code is amended and reenacted as follows:

15-20.1-02. State board for vocational and technical education - Director of vocational and technical education - Appointment, qualifications, assistants, duties. The state board ~~of public school education is the state board~~ for vocational and technical education consists of the members of the state board of public school education, the executive director of job service North Dakota, and the commissioner of higher education or the commissioner's designee. The state board, ~~acting through the office of the superintendent of public instruction,~~ shall appoint a director and executive officer of vocational and technical education who are charged with the administration, under the direction and supervision of the board, of the provisions of this chapter relating to vocational and technical education. The state board, ~~acting~~

through the office of the superintendent of public instruction, shall designate such assistants to the director as may be necessary to carry out the provisions of this chapter. The duties, terms of office, and compensation of the director and of his assistants must be determined by the state board. The director shall hold as a minimum a baccalaureate degree received from a recognized college or university. The director shall enforce such rules and regulations as the state board may adopt and shall prepare such reports concerning vocational education as the state board may require.

SECTION 6. A new subsection to section 15-20.1-03 of the North Dakota Century Code is created and enacted as follows:

To coordinate new and existing farm management programs offered by any state agency or entity.

SECTION 7. LEGISLATIVE INTENT - STATEWIDE ACCESS TO WORK FORCE TRAINING PROGRAMS - REPORT TO LEGISLATIVE COUNCIL COMMITTEE. It is the intent of the fifty-fifth legislative assembly that the state board for vocational and technical education cooperate with other state agencies and private organizations to provide work force training programs in a manner that will allow statewide access to these programs and will improve the agency's ability to coordinate and implement work force training programs in anticipation of future work force training needs. The state board for vocational and technical education shall provide, during the 1997-98 interim, periodic reports to the legislative council or its designated committee, on the agency's progress in coordinating statewide access to work force training programs.

SECTION 8. LEGISLATIVE INTENT - FARM MANAGEMENT PROGRAM FEES. It is the intent of the fifty-fifth legislative assembly that all fees collected for farm management programs pursuant to sections 6-09.10-02.1 and 6-09.10-06 be transferred to the state board for vocational and technical education. The state board for vocational and technical education shall distribute the fees as it determines necessary to state agencies and organizations involved in providing farm management programs.

Approved April 9, 1997
Filed April 10, 1997

CHAPTER 50

SENATE BILL NO. 2064

(Appropriations Committee)
(At the request of the Governor)

EXTENSION SERVICE, CROPS INSTITUTE, TRANSPORTATION INSTITUTE, RESEARCH CENTERS, AND SEED FARM

AN ACT to provide an appropriation for defraying the expenses of the office of management and budget, extension service, northern crops institute, upper great plains transportation institute, and the experiment centers; to provide a contingent appropriation; to provide for an interim legislative council study; to create and enact six new sections to chapter 4-05.1 and a new section to chapter 4-22 of the North Dakota Century Code, relating to the state board of agricultural research and the duties of the extension service; to amend and reenact sections 4-05.1-01, 4-05.1-02, 4-05.1-03, 4-05.1-04, 4-22-02, 4-22-03, 4-22-04, 4-22-06, 4-22-22, 4-22-47, and 4-22-48 of the North Dakota Century Code, relating to the state agricultural experiment station and state soil conservation committee; to repeal section 4-22-05 of the North Dakota Century Code, relating to employees of the state soil conservation committee; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the North Dakota state university extension service, the northern crops institute, the upper great plains transportation institute, and the North Dakota agricultural experiment centers for the purpose of defraying the expenses of their various divisions, for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Subdivision 1.	
NORTH DAKOTA STATE UNIVERSITY EXTENSION SERVICE	
Salaries and wages	\$20,654,371
Operating expenses	3,483,064
Equipment	450,000
Soil conservation district grants	580,000
Total all funds	<u>\$25,167,435</u>
Less estimated income	<u>13,017,998</u>
Total general fund appropriation	<u>\$12,149,437</u>
Subdivision 2.	
NORTHERN CROPS INSTITUTE	
Salaries and wages	\$ 780,678
Operating expenses	118,650
Equipment	72,450
Total all funds	<u>\$ 971,778</u>
Less estimated income	<u>335,977</u>
Total general fund appropriation	<u>\$ 635,801</u>

Subdivision 3.

UPPER GREAT PLAINS TRANSPORTATION INSTITUTE

Salaries and wages	\$ 2,132,128
Operating expenses	1,526,794
Equipment	45,000
Grants	<u>1,150,000</u>
Total all funds	\$ 4,853,922
Less estimated income	<u>4,403,417</u>
Total general fund appropriation	\$ 450,505

Subdivision 4.

AGRICULTURAL EXPERIMENT STATION

Salaries and wages	\$40,617,544
Total all funds	\$40,617,544
Estimated income:	
Main research station	\$14,127,692
Hettinger research center	63,473
Langdon research center	66,152
North central research center	35,663
Carrington research center	<u>325,321</u>
Less total estimated income	<u>14,668,801</u>
Total general fund appropriation	\$25,948,743

Subdivision 5.

MAIN RESEARCH CENTER

Operating expenses	\$ 4,638,480
Equipment	1,367,746
Capital improvements	1,123,800
Animal replacement	<u>300,000</u>
Total all funds	\$ 7,430,026
Less estimated income	3,508,546
Total general fund appropriation	\$ 3,921,480

Subdivision 6.

DICKINSON RESEARCH CENTER

Operating expenses	\$ 463,503
Equipment	54,076
Capital improvements	35,000
Animal replacement	<u>100,000</u>
Total all funds	\$ 652,579
Less estimated income	<u>531,676</u>
Total general fund appropriation	\$ 120,903

Subdivision 7.

CENTRAL GRASSLANDS RESEARCH CENTER

Operating expenses	\$ 388,543
Equipment	85,193
Animal replacement	<u>100,000</u>
Total all funds	\$ 573,736
Less estimated income	<u>451,400</u>
Total general fund appropriation	\$ 122,336

Subdivision 8.

HETTINGER RESEARCH CENTER

Operating expenses	\$ 228,027
Equipment	112,600

Animal replacement	100,000
Total all funds	\$ 440,627
Less estimated income	237,595
Total general fund appropriation	\$ 203,032

Subdivision 9.

LANGDON RESEARCH CENTER

Operating expenses	\$ 173,002
Equipment	42,800
Total all funds	\$ 215,802
Less estimated income	112,198
Total general fund appropriation	\$ 103,604

Subdivision 10.

NORTH CENTRAL RESEARCH CENTER

Operating expenses	\$ 323,503
Equipment	106,200
Capital improvements	250,000
Total all funds	\$ 679,703
Less estimated income	591,763
Total general fund appropriation	\$ 87,940

Subdivision 11.

WILLISTON RESEARCH CENTER

Operating expenses	\$ 300,632
Equipment	159,900
Total all funds	\$ 460,532
Less estimated income	233,123
Total general fund appropriation	\$ 227,409

Subdivision 12.

CARRINGTON RESEARCH CENTER

Operating expenses	\$ 635,712
Equipment	151,250
Animal replacement	100,000
Total all funds	\$ 886,962
Less estimated income	761,052
Total general fund appropriation	\$ 125,910

Subdivision 13.

AGRONOMY SEED FARM

Salaries and wages	\$ 303,231
Operating expenses	597,500
Equipment	172,000
Capital improvements	80,000
Capital improvements - farm shop	100,000
Total special funds appropriation	\$ 1,252,731
Grand total general fund appropriation S.B. 2064	\$44,147,100
Grand total special funds appropriation S.B. 2064	\$42,206,277
Grand total all funds appropriation S.B. 2064	\$86,353,377

SECTION 2. APPROPRIATION. There is hereby appropriated out of any moneys in the agricultural research fund in the state treasury, not otherwise appropriated, the sum of \$2,000,000, or so much of the sum as may be necessary, to the agricultural experiment station for the purpose of distributing agricultural research grants.

SECTION 3. CONTINGENT APPROPRIATION - WILLISTON RESEARCH CENTER. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$50,000, or so much of the sum as may be necessary, and from special funds derived from other income, the sum of \$100,000, or so much of the sum as may be necessary, to the Williston research center for the purpose of defraying a portion of the construction costs relating to the Ernie French center, for the biennium beginning July 1, 1997, and ending June 30, 1999. The general fund appropriation provided in this section may only be spent upon certification with the state treasurer that the Williston research center has received commitments to provide the \$100,000 of special funds derived from the other income for the project.

SECTION 4. ADDITIONAL INCOME - APPROPRIATION. Any additional income including funds from the federal government and gifts and donations from private sources received by the North Dakota agricultural experiment station, northern crops institute, upper great plains transportation institute, and the North Dakota state university extension service, except as otherwise provided by law, is hereby appropriated for the purpose designated in the gift, grant, or donation. All of the moneys in the operating fund must remain in the fund until expended pursuant to any specific legislative appropriation or an authorization from the emergency commission, and the balances of the moneys except those received from the federal government or as gifts from private sources, must be used to reduce the amount of moneys to be expended pursuant to the general fund appropriation only to the extent that the unencumbered balance in the operating fund on June 30, 1997, exceeds the estimated income for the biennium ending June 30, 1999.

SECTION 5. FUNDING ALLOCATIONS - AUTHORITY. The amounts in subdivision 4 of section 1 must be used for the benefit of the entities of the agricultural experiment station as determined by the vice president of agricultural affairs at North Dakota state university in accordance with the guidelines established in section 6 of this Act. The office of management and budget shall establish a salaries and wages line item for each entity of the agricultural experiment station for the 1997-99 biennium and shall transfer appropriation authority included in subdivision 4 of section 1 of this Act to the salaries and wages line item for each entity as requested by the vice president of agricultural affairs at North Dakota state university.

SECTION 6. ALLOCATIONS - SALARIES AND WAGES - LEGISLATIVE INTENT - DECLARATION OF PURPOSE - GUIDELINES.

1. It is the intent of the legislative assembly that the vice president of agricultural affairs at North Dakota state university consider the following items in making annual budget allocations for salaries and wages from the appropriations contained in subdivision 4 of section 1 of this Act:
 - a. Base salary allocations are to be made for operations based on mission, historical funding, research programs, and services of each entity.
 - b. Salary increase allocations are to be made based on general salary increases, one-time increases, performance-based increases, market increases, and other increases, including workload changes, new responsibilities, and promotions.

- c. Targeted initiative allocations are to be made as approved by the legislative assembly.
2. It is the intent of the legislative assembly that allocations are not to be used to close any entity of the agricultural experiment station nor may the work of any entity be substantially reorganized except as authorized by the legislative assembly.
3. It is the intent of the legislative assembly that each entity of the agricultural experiment station receive salaries and wages funding for the 1997-99 biennium that are at least ninety percent of the salaries and wages funding for the 1995-97 biennium.
4. The vice president of agricultural affairs at North Dakota state university shall periodically report to the budget section of the legislative council on the allocations made pursuant to this section and shall make recommendations regarding the allocation process for the 1999-2001 biennium.

SECTION 7. TRANSFER AUTHORITY. The state board of higher education is authorized to approve transfer of funds between line items for each agency included in section 1 of this Act and shall notify the office of management and budget within ten days following the transfer.

SECTION 8. TRANSFER AUTHORITY. Upon approval of the state board of higher education and the emergency commission, the director of the North Dakota agricultural experiment station may transfer appropriation authority between agencies included in subdivision 2 and in subdivisions 4 through 13 of section 1 of this Act.

SECTION 9. LINE ITEM TRANSFERS - EMERGENCY COMMISSION. Notwithstanding any other provision of law, the emergency commission may authorize the entities in subdivisions 5 through 13 of section 1 of this Act to establish a capital improvements line item and to transfer appropriation authority from another line item within the same subdivision to the capital improvements line item for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 10. LEGISLATIVE INTENT - PART-TIME LABOR. It is the intent of the legislative assembly that the board of higher education may authorize transfers for the entities of the agricultural experiment station of up to five percent of a capital improvements line item to salaries and wages for part-time labor costs relating to repairs, maintenance, and improvements at the research centers for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 11. AGRICULTURAL STORAGE FACILITIES. The board of higher education may authorize the construction of structures for storage of agricultural products or equipment by entities listed in section 1 of this Act provided the structures do not exceed \$100,000 in cost.

SECTION 12. UNEXPENDED FUNDS - EXEMPTION. Capital improvements funds contained in subdivision 2 of section 1 of chapter 5 of the 1995 Session Laws for the northern crops institute and capital improvements funds contained in subdivision 8 of section 1 of chapter 5 of the 1995 Session Laws for the north central research center are not subject to the provisions of section 54-44.1-11 and any unexpended funds from these appropriations are available during the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 13. ADDITIONAL INCOME - NORTH CENTRAL RESEARCH CENTER. Notwithstanding the provisions of section 4 of this Act, the north central research center may utilize up to \$25,000 of unanticipated earned income received during the 1997-99 biennium for defraying the costs associated with the construction of a new headquarters building at the center for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 14. LEGISLATIVE INTENT - FULL-TIME EQUIVALENTS. The board of higher education is authorized to adjust or increase full-time equivalent positions as needed, subject to availability of funds. The board shall report any adjustments to the office of management and budget prior to the submission of the 1999-2001 budget request.

SECTION 15. INTERIM LEGISLATIVE COUNCIL STUDY. Because the North Dakota state university cooperative extension service and agricultural research centers are part of the North Dakota university system, the legislative council, during the 1997-99 interim, shall consider studying the feasibility and desirability of including the extension service and research centers appropriations in the same appropriations bill as other entities of the university system. If the legislative council determines it is feasible and desirable, it shall recommend the format for the appropriations bill to be introduced to the 1999 legislative assembly.

SECTION 16. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying, during the 1997-98 interim, alternative methods of governing and delivering soil conservation services in North Dakota. The study must address the advisability of continuing to elect state soil conservation committee members and district supervisors.

¹⁵ **SECTION 17. AMENDMENT.** Section 4-05.1-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-05.1-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Agricultural experiment station" means the North Dakota state university main research ~~station~~ center, the Dickinson research extension center, the Williston research extension center, the Langdon research extension center, the central grasslands research extension center, the Carrington research extension center, the Hettinger research extension center, the north central research extension center, the agronomy seed farm, and any other department or agency designated by the state board of higher education.
2. "~~Director~~" means the director of the ~~North Dakota agricultural experiment station~~.
3. "~~Superintendent~~" "Center director" means an administrator in charge of a research or research extension center.
3. "Station director" means the administrator of the agricultural experiment station.

¹⁵ Section 4-05.1-01 was also amended by section 1 of Senate Bill No. 2025, chapter 57.

SECTION 18. AMENDMENT. Section 4-05.1-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-05.1-02. Agricultural experiment station. ~~The state board of agricultural research and the president of North Dakota state university shall control and administer the North Dakota agricultural experiment station is under the control of and~~ subject to the supervision of the state board of higher education. ~~The agricultural experiment station shall develop research programs involving the basic and applied biological, physical, and social sciences that will enhance agricultural systems and improve the quality of life. Funds appropriated to the agricultural experiment station may not be commingled with funds appropriated to North Dakota state university. Appropriation requests to defray expenses of the agricultural experiment station must be separate from appropriation requests to defray expenses of North Dakota state university.~~

¹⁶ **SECTION 19. AMENDMENT.** Section 4-05.1-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-05.1-03. Director - Superintendents Center directors - Research station and research extension centers - Records and information. ~~The director is under the direction of the president of the North Dakota state university of agriculture and applied science. The research station and research extension centers of the North Dakota agricultural experiment station are under the jurisdiction of the station director. Each research or research extension center must be administered by a superintendent center director who shall report to the station director. Each research or research extension center shall keep detailed records of all research activities and publish and disseminate research results and information for the benefit of this state.~~

¹⁷ **SECTION 20. AMENDMENT.** Section 4-05.1-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-05.1-04. Reports to director and state board of higher education. ~~Each superintendent center director shall submit a biennial~~ an annual report to the station director ~~on or before the first day of August of each odd-numbered year as directed by the state board of agricultural research.~~ Each report must set forth in detail the investigations and experiments made during the preceding ~~fiscal biennium year,~~ recommendations for the welfare of the center, the financial condition of the center, how all moneys have been expended, and the results of experiments. The station director shall submit these reports, with a ~~biennial~~ report of the North Dakota state university main research ~~station center,~~ to the state board of agricultural research and the state board of higher education on or before the first day of September of ~~each odd-numbered year.~~ If the state board of higher education submits a biennial report to the governor and the secretary of state in accordance with section 54-06-04, the report must include a composite of the reports from the main research station center and each research extension center.

¹⁶ Section 4-05.1-03 was also amended by section 2 of Senate Bill No. 2025, chapter 57.

¹⁷ Section 4-05.1-04 was also amended by section 3 of Senate Bill No. 2025, chapter 57.

SECTION 21. A new section to chapter 4-05.1 of the North Dakota Century Code is created and enacted as follows:

State board of agricultural research - Membership - Terms.

1. The state board of agricultural research consists of:
 - a. The president of North Dakota state university;
 - b. The vice president of agricultural affairs at North Dakota state university;
 - c. The administrator of the agricultural experiment station;
 - d. The five persons appointed to the agricultural consultation board by the ag coalition and serving in that capacity on July 1, 1997;
 - e. The five persons appointed to the agricultural consultation board by the extension service's multicounty program units and serving in that capacity on July 1, 1997;
 - f. The two persons appointed to the agricultural consultation board by the president of North Dakota state university as representatives of the state's research extension centers and serving in that capacity on July 1, 1997;
 - g. The commissioner of agriculture who serves in an ex officio capacity; and
 - h. The director of the North Dakota state university extension service who serves in an ex officio capacity.
2. a. The initial five members appointed by the ag coalition shall select their terms by lot so that one member serves for one year, one member serves for two years, one member serves for three years, one member serves for four years, and one member serves for five years.
 - b. The initial five members appointed by the extension service's multicounty program units shall select their terms by lot so that one member serves for one year, one member serves for two years, one member serves for three years, one member serves for four years, and one member serves for five years.
 - c. The two persons appointed as representatives of the state's research extension centers shall serve only through June 30, 1998.
3. At the completion of each initial term, the term of office for each member is five years, beginning on July first. No person may be appointed to a second five-year term.
4. a. At least ninety days before the conclusion of the initial term of each member appointed by the ag coalition, the ag coalition shall provide to the state board of higher education a list of two or more names from which the state board of higher education shall appoint a successor. Future appointments to these five positions must be

made in the same manner. The state board of higher education shall ensure that four out of the five seats are held by agricultural producers.

- b. At least ninety days before the conclusion of the initial term of each member appointed by the extension service's multicounty program units, the units through their advisory groups shall provide to the state board of higher education a list of two or more names from which the state board of higher education shall appoint a successor. Future appointments to these five positions must be made in the same manner. The state board of higher education shall ensure that four out of the five seats are held by agricultural producers.

SECTION 22. A new section to chapter 4-05.1 of the North Dakota Century Code is created and enacted as follows:

Compensation of board members - Expenses. Each appointed member of the state board of agricultural research is entitled to receive sixty-two dollars and fifty cents per day as compensation for the time actually spent devoted to the duties of office and is entitled to receive necessary expenses in the same manner and amounts as state officials for attending meetings and performing other functions of office.

SECTION 23. A new section to chapter 4-05.1 of the North Dakota Century Code is created and enacted as follows:

State board of agricultural research - Chairman - Meetings. The state board of agricultural research annually shall elect one of its members to serve as chairman. The board shall meet at the times and locations designated by the chairman in consultation with the vice president of agricultural affairs at North Dakota state university.

SECTION 24. A new section to chapter 4-05.1 of the North Dakota Century Code is created and enacted as follows:

State board of agricultural research - Duties. Within the policies of the state board of higher education, the state board of agricultural research is responsible for the budgeting, supervision, and policymaking responsibilities associated with the supervision of the agricultural experiment station. The agricultural research board shall:

1. Determine the causes of any adverse economic impacts on crops and livestock produced in this state;
2. Develop ongoing strategies for the provision of research solutions to negate adverse economic impacts on crops and livestock produced in this state;
3. Make available financial resources, including grants and salaries, and make available equipment and facilities to implement the strategies developed under subsection 2, subject to approval by the state board of higher education;
4. Develop an annual budget for the operation of the agricultural experiment station;

5. Develop a biennial budget request and submit that request to the state board of higher education on or before March first of each even-numbered year;
6. Maximize the use of existing financial resources, equipment, and facilities to generate the greatest economic benefit from research efforts and to promote efficiency;
7. Annually evaluate the results of research activities and expenditures and report the findings to the legislative council and the state board of higher education;
8. Advise the administration of North Dakota state university regarding the recruitment and selection of the vice president of agricultural affairs and the station director; and
9. Advise the director of the extension service regarding the dissemination of research information and the best practices for management of the extension service.

SECTION 25. A new section to chapter 4-05.1 of the North Dakota Century Code is created and enacted as follows:

Agricultural research fund. The agricultural research fund is a special fund in the state treasury. The moneys in the fund must be expended for purposes of agricultural research.

SECTION 26. A new section to chapter 4-05.1 of the North Dakota Century Code is created and enacted as follows:

State board of agricultural research - Apportionment of research funds.

1. The state board of agricultural research annually shall apportion the proceeds of the agricultural research fund as follows:
 - a. Seventy percent to research activities affecting North Dakota agricultural commodities that account for at least two percent of the gross sales of all agricultural commodities grown or produced in the state. The percentage of the dollars available for each agricultural commodity under this section may not exceed the percentage that the gross sales of the agricultural commodity bear to the North Dakota gross sales of all agricultural commodities grown or produced during the previous year, as determined by the agricultural statistics service;
 - b. Eighteen percent to research activities affecting North Dakota animal agriculture; and
 - c. Twelve percent to research activities affecting new and emerging crops in North Dakota.
2. The state board of agricultural research shall solicit proposals for research from the public and private sectors and shall appoint committees to review the proposals and award the agricultural research grants on a competitive basis. Each committee must consist of a majority of agricultural producers selected in consultation with the

agricultural commodity groups representing commodities that are the subjects of the proposed research and may include researchers and other individuals knowledgeable about the proposed area of research. Whenever possible, the committees shall require that a grant recipient commit matching funds.

3. The state board of agricultural research shall develop policies regarding the award of research grants, including requirements for matching funds, cooperation with other in-state and out-of-state researchers, and coordination with other in-state and out-of-state proposed or ongoing research projects.

SECTION 27. AMENDMENT. Section 4-22-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-22-02. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. ~~"Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.~~
2. ~~"Committee" or "state soil conservation committee" means the state soil conservation committee established by this chapter.~~
2. "Director" means the director of the North Dakota state university extension service.
3. ~~"District" or "soil conservation district" means a governmental subdivision of this state, and a public body, corporate and politic, organized in accordance with the provisions of this chapter for the purposes, with the powers, and subject to the restrictions hereinafter set forth provided by law.~~
4. ~~"Due notice" means notice published at least twice, with an interval of at least seven days between the two publication dates, in a newspaper or other publication of general circulation within the appropriate area; or if no such.~~ If this type of publication of general circulation is not available, by posting the term means notice posted at a reasonable number of conspicuous places within the appropriate area, such the posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such due notice, at the time and place designated in such the notice, adjournment may be made from time to time without the necessity of renewing the notice for the adjourned dates.
5. ~~"Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.~~
6. ~~"Land occupier" or "occupier of land" includes any person, firm, corporation, or limited liability company who that holds title to or is in possession of any lands lying within a district organized under the provisions of this chapter, whether as owner, lessee, renter, tenant, or otherwise, and whether or not the person, firm, corporation, or limited~~

liability company is living or located in a rural or urban area within the district.

7. "Petition" means a petition filed under ~~the provisions of~~ this chapter for the creation of a soil conservation district.
8. "Qualified elector" means ~~every person of the age of an individual who is at least~~ eighteen or upwards who years old, is a citizen of the United States, and who has resided in the ~~state and in the~~ precinct thirty days next preceding any election, whether or not the ~~person~~ individual is living in a rural or urban area.
9. "~~State~~" means the state of North Dakota.
- ~~10.~~ "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with ~~the provisions of~~ this chapter.
- ~~11.~~ "~~United States~~" or "~~agencies of the United States~~" includes the United States of America, the soil conservation service of the United States department of agriculture, and any other agency or instrumentality, ~~corporate or otherwise, of the United States of America.~~

SECTION 28. AMENDMENT. Section 4-22-03 of the North Dakota Century Code is amended and reenacted as follows:

4-22-03. State soil conservation committee - Elective and appointive members - Records and seal.

1. ~~The state soil conservation committee must be maintained as an agency of this state to~~ shall perform the functions conferred upon it in this chapter within the limits of legislative appropriations. The committee consists of seven voting members, of whom five must be elected and two must be appointed by the governor ~~as provided herein.~~
- ~~4.~~ Elective members:
 2. For the purpose of electing the five elective members of the committee, the state ~~of North Dakota~~ is hereby divided into five areas; ~~as follows:~~
 - ~~A.~~ a. (1) Area I includes ~~the counties of~~ Benson, Cavalier, Eddy, Foster, Grand Forks, Nelson, Pembina, Ramsey, Towner, Walsh, and Wells counties.
 - ~~B.~~ (2) Area II ~~shall include the counties of~~ includes Barnes, Cass, Dickey, Griggs, LaMoure, Ransom, Richland, Sargent, Steele, and Traill counties.
 - ~~C.~~ (3) Area III ~~shall include the counties of~~ includes Bottineau, Burke, Divide, McHenry, Mountrail, Pierce, Renville, Rolette, and Ward counties.
 - ~~D.~~ (4) Area IV ~~shall include the counties of~~ includes Burleigh, Emmons, Kidder, Logan, McIntosh, McLean, Morton, Oliver, Sheridan, Sioux, and Stutsman counties.

- ~~E.~~ (5) Area V shall include the counties of includes Adams, Billings, Bowman, Dunn, Golden Valley, Grant, Hettinger, McKenzie, Mercer, Stark, Slope, and Williams counties.
- b. One member of the committee must be elected from each of the five areas by vote of the members of the boards of supervisors of the ~~conservation~~ districts in that area. Every voting member of a board of supervisors of a ~~conservation~~ district organized under this chapter is eligible to vote in the election for a member of the committee in the area in which the district is located.
- c. Elections must be held under ~~regulations to be issued~~ rules adopted by the committee and in cooperation with and at the time of the North Dakota association of soil conservation districts area meetings. In those cases where the territory of a district does not lie wholly within the boundaries of one of the five areas established under this section, the ~~regulations~~ rules must provide for the assignment of ~~such the~~ district by the committee for the purposes of ~~such the~~ elections, to the area within which most of its population resides.
- d. The committee shall conduct the election of members of the committee ~~must be conducted by the committee and~~. The election need not be held on the same dates or in the same places as the general elections for state or local officers.
2. Appointive members:
3. ~~Two~~ The governor shall appoint two members of the committee ~~must be appointed by the governor, who~~. The governor shall select appointees ~~appoint individuals~~ who can represent those interests within the state not already represented, or less fully represented, by one or more of the five elected members of the committee. The governor shall attempt, so far as feasible, to make possible suitable representation for all interests in the state in the membership of the committee, including the interests of; ~~but not limited to~~, farmers, livestock growers, rural areas, small towns, cities, and industry and business, recognizing that any single member of the committee may sometimes appropriately be regarded as representing more than one of these interests.
4. The committee shall invite representatives of the state association of soil conservation districts, North Dakota ~~cooperative state university~~ extension service, ~~the~~ soil conservation service, ~~North Dakota~~ state water commission, ~~the~~ commissioner of agriculture, and ~~the~~ game and fish department to serve as advisory, nonvoting members of the committee.
5. The term of office of every member of the committee is three years and until a successor is elected or appointed. ~~The governor has the power to extend the terms of one or more members of the committee in office upon the effective date of this chapter, in order to provide for overlapping terms for the members of the committee.~~ A member of the committee is eligible for reelection and reappointment, but no member may serve for more than two full, successive terms. Vacancies ~~The governor may fill a vacancy in either an~~ elective or appointive terms ~~may be filled~~ term for the unexpired term ~~by appointment by the~~

governor. The committee shall keep a record of its official actions, shall adopt a seal, which seal must be judicially noticed, and may perform such acts, hold such public hearings, and adopt such rules as may be necessary for the execution of its functions under this chapter.

SECTION 29. AMENDMENT. Section 4-22-04 of the North Dakota Century Code is amended and reenacted as follows:

4-22-04. Committee - Chairman - Quorum - Compensation - Provision for surety bonds and annual audit. The committee shall meet annually and select its chairman; ~~who~~. The chairman shall serve for one year from the date of his selection and who is not eligible for a second term as chairman. Additional meetings may be held by the committee as considered necessary by the chairman, at a time and place to be fixed by the chairman. ~~Special~~ The chairman shall call special meetings must be called by the chairman upon written request of any four members. ~~A majority of the committee constitutes a quorum, and the concurrence of a majority in any matter within its duties is required for its determination.~~ The members of the committee ~~shall~~ are entitled to receive forty-five dollars per day as compensation for their services on the committee, and are entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties on the committee, in the same manner and at the same rate as prescribed by law for state employees and officials. ~~The committee shall provide for the execution of surety bonds, which may be issued by the state bonding fund, for all employees who are entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, rules, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.~~

SECTION 30. AMENDMENT. Section 4-22-06 of the North Dakota Century Code is amended and reenacted as follows:

4-22-06. Duties and powers generally. ~~In addition to the duties and powers hereinafter conferred upon the state soil conservation~~ The committee; it has the following duties and powers:

1. To offer such assistance as may be appropriate to the supervisors of ~~soil conservation~~ districts in the carrying out of any of their powers and programs.
2. To keep the supervisors of each of the several districts informed of the activities and experience of all other districts, and to facilitate an interchange of advice and experience between such districts and cooperation between them.
3. ~~To coordinate the programs of the several conservation districts so far as this may be done by advice and consultation.~~
4. To secure the cooperation and assistance of state, federal, regional, interstate, and local, public, and private agencies with ~~conservation~~ districts; and to facilitate arrangements under which ~~conservation~~ districts may assist or serve county governing bodies and other agencies in the administration of any activity concerned with the conservation of natural resources.
5. ~~To disseminate information throughout the state concerning the activities and programs of the soil conservation districts, and to encourage the formation of such districts in areas where their organization is desirable.~~

- ~~6.~~ To review district programs, to coordinate the programs of the several districts, and to coordinate programs and activities as they relate to other special purpose districts.
- ~~7.~~ 4. To review agreements, or forms of agreements, proposed to be entered into by districts with other districts or with state, federal, interstate, or other public or private organizations, and advise the districts concerning such agreements or forms of agreement.
- ~~8.~~ 5. To recommend to the inclusion in annual and longer term director biennial budgets of funds necessary from the legislative assembly to finance the activities of the committee and districts; and to distribute such moneys appropriated by the legislative assembly according to applicable state laws or regulations for grants to soil conservation districts.
- ~~9.~~ To compile information and make studies, summaries, and other analyses of district programs in relation to each other and to other resource conservation programs on a statewide basis.
- ~~10.~~ 6. To represent the state in matters affecting soil conservation.
- ~~11.~~ 7. To require annual reports from conservation districts; the form and content of which must be developed by the committee on consultation with district supervisors.
- ~~12.~~ 8. To establish uniform accounting methods which must be used by soil conservation districts, and to establish a uniform auditing reporting system.
- ~~13.~~ 9. Pursuant to procedures developed mutually by the committee and other state and local agencies that are authorized to plan or administer activities significantly affecting the conservation of natural resources, to receive from such To receive from other state and local agencies for review and comment suitable descriptions of their plans, programs, and activities affecting the conservation of natural resources for purposes of coordination with district conservation programs; to arrange for and participate in conferences necessary to avoid conflict among such plans and programs; to call attention to omissions; and to avoid duplication of effort.
- ~~14.~~ To develop and administer policy guidelines which the districts shall follow in the operation of district activities.

SECTION 31. A new section to chapter 4-22 of the North Dakota Century Code is created and enacted as follows:

Soil conservation - Duties. The North Dakota state university extension service shall assist the committee in performing the committee's duties, within the limits of legislative appropriation. The director shall instruct extension agents to cooperate in the delivery of information and services to the districts.

¹⁸ **SECTION 32. AMENDMENT.** Section 4-22-22 of the North Dakota Century Code is amended and reenacted as follows:

4-22-22. Supervisors - Terms of office - Vacancies - Removal - Compensation - Expenses. At the general election to be held in 1972, three district supervisors must be elected. The candidate receiving the largest number of votes is elected for a six-year term; the candidate receiving the second highest number of votes is elected for a four-year term; and the candidate receiving the third highest number of votes is elected for a two-year term. At each succeeding general election, one supervisor must be elected for a term of six years, or until the successor is duly elected and qualified, to each expiring or vacant term. In newly formed districts, three supervisors must be elected at the first general election following the district's organization. The candidate receiving the largest number of votes is elected for a six-year term; the candidate receiving the second highest number of votes is elected for a four-year term; and the candidate receiving the third highest number of votes is elected for a two-year term. At each succeeding general election, one supervisor must be elected for a term of six years, or until the successor is duly elected and qualified, to each expiring or vacant term. The county auditor of the county or counties in which the district lies shall return to the secretary of state within fifteen days following any general election a certified abstract of the votes cast in the county at such election for each candidate for district supervisor. At the time that the county auditor transmits the certified abstract of the votes cast for each candidate, the county auditor shall file with the secretary of state a certificate showing the name and address of each candidate.

In order to be eligible for election to the office of supervisor, candidates must be land occupiers and physically living in the district. Candidates must be elected on a nonpartisan ballot. In case the office of any supervisor, for any reason, becomes vacant, the remaining members of the board of supervisors shall, with the advice and consent of the state committee, fill the vacancy by appointment. If vacancies occur in the office of two supervisors, the remaining supervisor and the state committee shall fill the vacancy; and in case the offices of all supervisors of a district become vacant, the state committee shall fill the vacancies by appointment. A supervisor appointed to fill a vacancy holds office until the next general election. A supervisor elected to fill a vacancy serves the balance of the unexpired term in which the vacancy occurred.

Any soil conservation district, upon resolution of the three elected supervisors, may appoint two additional supervisors who shall serve for a term of one year from and after the date of their appointment. Such supervisors must be appointed by a majority of the three elected supervisors and have all the powers, voting privileges, duties, and responsibilities of elected supervisors, except that the expense allowances of the appointed supervisors must be paid by the local soil conservation district concerned. As far as possible, the appointed supervisors shall represent interests within the district which are not represented by the elected supervisors.

Any supervisor of a soil conservation district may, after notice given and hearing held in accordance with chapter 28-32, be removed from office by the state committee.

¹⁸ Section 4-22-22 was also amended by section 1 of House Bill No. 1088, chapter 69, and section 2 of Senate Bill No. 2172, chapter 68.

The supervisors of soil conservation districts are entitled to receive, upon a majority vote of the supervisors, twenty-five dollars for attending each regular or special meeting as compensation for their services. Supervisors of soil conservation districts are entitled to receive travel and subsistence expenses necessarily incurred in attending district, state, or other meetings approved by the state soil conservation committee; ~~which expenses must be paid from appropriations available to the state committee.~~ The compensation and all other expenses including travel incurred by district supervisors while transacting district business and not specifically authorized by the state soil conservation committee must be paid from district funds.

SECTION 33. AMENDMENT. Section 4-22-47 of the North Dakota Century Code is amended and reenacted as follows:

4-22-47. Consolidation of districts - Petition - Referendum - Conduct of referendum. Two or more ~~soil conservation~~ districts may be consolidated into one district by compliance with ~~the provisions of~~ this chapter. A petition ~~or petitions~~ for consolidation of soil conservation districts must be filed with the ~~secretary of the~~ state soil conservation committee and must be signed by at least twenty-five qualified electors living in each district. Upon the filing of ~~such a~~ petition ~~or petitions~~, the ~~state~~ committee ~~shall~~ by resolution ~~shall~~ fix a date for a referendum to be held in each ~~such~~ the district and shall direct the ~~board of supervisors thereof~~ to cause notice of ~~such~~ the referendum to be posted in at least five conspicuous places within the district and to be published once each week for two consecutive weeks ~~prior to~~ before the referendum in a newspaper of general circulation ~~therein in the districts involved.~~ Only qualified electors living within the district are eligible to vote at the referendum. ~~Such~~ The notice must state the date of the referendum, ~~the~~ identify each polling place ~~or places~~ for holding ~~such~~ the referendum, the time when the polls will open and close, and the question to be submitted to the qualified electors. ~~Such~~ The notice must be substantially in the following form:

Notice is hereby given that ~~on~~ On the ____ day of _____, 19 ____ a referendum will be held at _____
 (Designate polling place or places)
 for the purpose of submitting to the qualified electors within _____ soil conservation district
 (Name of district)
 the question as to whether _____ soil conservation districts
 (Names of districts)
 embracing the following townships _____
 (Designate townships, by number and range)
 shall be consolidated into one soil conservation district.
 The ballot ~~will~~ must be in the following form:
 Shall _____ soil conservation districts embracing the
 (Names of districts)
 following townships _____ be
 (Designate townships, by number and range)
 consolidated into one soil conservation district?
 Yes _____
 No _____

The board of supervisors of the district shall appoint the board of election for each polling place ~~must be appointed by the board of supervisors of the district and consists.~~ The board of election must consist of one inspector, one judge, and one clerk. Members of such the election board shall ~~are entitled to receive the sum of~~ five dollars for their services.

¹⁹ **SECTION 34. AMENDMENT.** Section 4-22-48 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-22-48. Conduct of referendum - Canvass of votes. A referendum upon the question of consolidating two or more soil conservation districts must be conducted in accordance with the laws of the state prescribing the conduct of general elections. After the polls are closed, the board of election shall ~~proceed to~~ canvass the votes and the clerk of the board shall certify to the board of supervisors of the clerk's district and to the state committee the result of the referendum. ~~The clerk shall then securely wrap the ballots cast at the referendum and shall express or mail the ballots to the secretary of the state committee. The committee shall also canvass the ballots and verify the result. The secretary of the committee shall file the ballots in the secretary's office. Upon the expiration of two years after such ballots were canvassed by the state committee they may be destroyed. The state committee shall publish the results of the referendum after having canvassed the ballots and if the committee finds that~~ If a majority of the ballots cast on the question in each district are for consolidation, the committee shall file with the secretary of state a statement certifying that the consolidated district has been duly and regularly established.

SECTION 35. REPEAL. Section 4-22-05 of the 1995 Supplement to the North Dakota Century Code is repealed.

SECTION 36. EMERGENCY. The equipment line item in subdivision 8 of section 1 of this Act is declared to be an emergency measure.

Approved April 11, 1997
Filed April 11, 1997

¹⁹ Section 4-22-48 was also amended by section 3 of Senate Bill No. 2172, chapter 68.

GENERAL PROVISIONS

CHAPTER 51

SENATE BILL NO. 2046

(Legislative Council)

(Judiciary Committee)

(Senators W. Stenehjem, Traynor, Watne)

(Representatives Kretschmar, Brown, D. Johnson)

TECHNICAL CORRECTIONS ACT

AN ACT to amend and reenact subsection 4 of section 10-19.1-129, sections 11-04-01, 11-18-14, subsection 1 of section 14-07.3-01, subsection 4 of section 15-27.6-13, subsection 10 of section 15-29-08, section 15-37-01, subsection 1 of section 15-45-02, subsection 1 of section 15-47-27.2, sections 15-47-46, 16.1-16-02, subsection 5 of section 20.1-03-04, section 23-01-03, subsection 4 of section 23-03-07, section 24-01-13, subsection 13 of section 25-01.3-06, subsection 6 of section 26.1-08-01, section 26.1-41-07, subsection 4 of section 26.1-47-01, section 26.1-48-02, subsection 3 of section 27-01-10, section 28-20.1-02, subsection 1 of section 28-20.1-03, subdivision q of subsection 1 of section 28-32-01, subsection 7 of section 30.1-10-03, section 35-21-01, subsection 6 of section 37-27-01, subsection 5 of section 38-08-04, subsection 3 of section 39-04-19, subsection 9 of section 41-09-28, sections 42-03-01, 42-03-03, subsection 1 of section 45-22-03, section 46-05-01, subsection 2 of section 47-02-27.5, section 50-06-01.8, subdivision a of subsection 4 of section 54-52-17, and section 54-56-01 of the North Dakota Century Code, relating to technical corrections and improper, inaccurate, redundant, missing, or obsolete references; and to repeal sections 29-01-32, 32-03-19, and 32-03-26 of the North Dakota Century Code, relating to obsolete provisions relating to damages for breach of promise to marry and seduction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 10-19.1-129 of the North Dakota Century Code is amended and reenacted as follows:

4. Process, notice, or demand may be served on a dissolved corporation as provided in this subsection. The court shall determine if service is proper. If a corporation has voluntarily dissolved or a court has entered a decree of dissolution, service may be made according to subsection 2 so long as claims are not finally barred under section 10-19.1-124. If a corporation has been involuntarily dissolved pursuant to section ~~10-19.1-02.2~~ 10-23-02.2, service may be made according to subsection 2.

SECTION 2. AMENDMENT. Section 11-04-01 of the North Dakota Century Code is amended and reenacted as follows:

11-04-01. Selection of candidates for permanent county seat at primary election. When the temporary county seat of any county has been designated by the

~~governor under section 11-02-04, or by the board of county commissioners under section 11-03-07, the question of the permanent location of such county seat may be voted upon at any primary election for the purpose of selecting candidates to be voted upon at the general election.~~

SECTION 3. AMENDMENT. Section 11-18-14 of the North Dakota Century Code is amended and reenacted as follows:

11-18-14. Register of deeds to remove and destroy certain documents - Records to be made. The register of deeds in each county in this state, unless otherwise earlier permitted by law, shall remove from the files in the register's office, and destroy, all ~~seed liens, chattel mortgages, threshing or drying liens, crop production liens, combining liens,~~ agricultural processor's liens, agricultural supplier's liens, agister's liens, mechanic's liens, repairman's liens, unpaid earned insurance premium liens, and sales contracts together with any releases for the ~~same instrument~~ upon which a claim for relief has accrued and which claim for relief is more than ten years old. At the time of destroying the files the register of deeds shall note on the margin of the index opposite the record of each instrument so removed and destroyed the date when the ~~same instrument~~ was destroyed.

SECTION 4. AMENDMENT. Subsection 1 of section 14-07.3-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Counseling center" means a domestic violence organization as defined in section ~~14-07.1-18~~ 14-07.1-01.

SECTION 5. AMENDMENT. Subsection 4 of section 15-27.6-13 of the North Dakota Century Code is amended and reenacted as follows:

4. "Qualified by certification" means a teacher is qualified pursuant to the laws of this state and the rules of the ~~superintendent of public instruction~~ education standards and practices board to serve as a teacher in a particular class or subject area.

SECTION 6. AMENDMENT. Subsection 10 of section 15-29-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10. To contract with, employ, and pay all teachers in the schools and, for cause, to dismiss or suspend any teacher when the interests of the school may require it. Except as provided in section 15-29-08.4, every teacher must hold a valid North Dakota teaching certificate issued by the ~~superintendent of public instruction~~ education standards and practices board. No person who is related to any member of the board by blood or marriage may be employed as a teacher without the concurrence of two-thirds of the board.

SECTION 7. AMENDMENT. Section 15-37-01 of the North Dakota Century Code is amended and reenacted as follows:

15-37-01. Teacher's oath. Every person who applies for a certificate to teach in any of the public schools of the state shall subscribe to the following oath or affirmation:

I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the state of North Dakota, and that I will faithfully discharge the duties of my position, according to the best of my ability.

The oath or affirmation must be executed in duplicate, and one copy thereof must be filed with the ~~superintendent of public instruction~~ education standards and practices board when the application for a certificate is made, and the other copy must be retained by the person who subscribes to such oath or affirmation. No certificate may be issued unless a duly witnessed or notarized oath or affirmation has been filed.

SECTION 8. AMENDMENT. Subsection 1 of section 15-45-02 of the North Dakota Century Code is amended and reenacted as follows:

1. All kindergarten teachers must hold valid certificates issued under rules adopted by the ~~superintendent of public instruction~~ education standards and practices board as provided in chapter 15-36.

SECTION 9. AMENDMENT. Subsection 1 of section 15-47-27.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The term "teacher", as used in this section, means a contracted state employee holding a professional certificate and certified by the ~~superintendent of public instruction~~ education standards and practices board to teach in this state, whose primary task is to provide direct instruction in a classroom, or on an individualized basis, and whose work schedule must be in accordance with the school calendar, guidance counselors, school librarians, itinerant outreach teachers, and vocational and other technological resource personnel who are required to meet the same teaching and certification requirements. ~~Superintendents~~ The term does not include superintendents, assistant superintendents, principals, supervisory personnel, substitutes, and all paraprofessionals ~~are not included in this definition.~~

¹ **SECTION 10. AMENDMENT.** Section 15-47-46 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-47-46. Teacher qualification - Kindergarten through grade eight - Exceptions.

1. Except as provided in subsections 2 through 4 or section 15-29-08.4, all teachers teaching kindergarten through grade eight must hold a teaching certificate and:
 - a. A minimum of a kindergarten endorsement to teach kindergarten;
 - b. A major, minor, or endorsement in elementary education to teach elementary education in grades one through eight; or

¹ Section 15-47-46 was also amended by section 1 of House Bill No. 1402, chapter 184.

- c. An endorsement in kindergarten or elementary education from the superintendent of public instruction education standards and practices board attained prior to or within two years of the assignment to teach kindergarten or elementary education. An endorsement may be obtained by completing teaching requirements and a minimum number of credit hours in courses prescribed by the superintendent of public instruction education standards and practices board.
2. A teacher who holds a teaching certificate and a major or an endorsement in middle school education attained prior to, or within two years of, the assignment to teach middle school may teach grades five through eight.
3. A teacher who holds a teaching certificate and a major or minor in the course area or field in which the teacher is teaching may teach grades seven and eight.
4. A teacher who holds a teaching certificate from the education standards and practices board and meets the requirements of the superintendent of public instruction may teach special education, foreign language, art, music, physical education, and computer education in kindergarten through grade eight.

SECTION 11. AMENDMENT. Section 16.1-16-02 of the North Dakota Century Code is amended and reenacted as follows:

16.1-16-02. Who may contest election. A defeated candidate or ten qualified electors may contest the nomination or election of any person or the approval or rejection of any question or proposition submitted to a vote of the electorate, pursuant to chapters 16.1-04, 16.1-05, 16.1-06, 16.1-07, ~~16.1-08~~ 16.1-08.1, 16.1-09, 16.1-10, and 16.1-11. In a county election to change the county seat or to change the boundaries of the county, the complaint must be filed against the board of county commissioners, who shall appear and defend the contest action.

SECTION 12. AMENDMENT. Subsection 5 of section 20.1-03-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. Residents may fish without a resident fishing license ~~or trout and salmon license stamp~~ on free fishing days. The date of these free fishing days may be set by proclamation by the governor.

SECTION 13. AMENDMENT. Section 23-01-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-01-03. Powers and duties of the health council. The health council shall:

1. Fix, subject to the provisions of section 23-01-02, the time and place of the meetings of the council.
2. Make rules and regulations for the government of the council and its officers and meetings.

3. Establish standards, rules, and regulations which are found necessary for the maintenance of public health, including sanitation and disease control.
4. Provide for the development, establishment, and enforcement of basic standards for hospitals and related medical institutions which render medical and nursing care, and for the construction and maintenance of such institutions, such standards to cover matters pertaining to sanitation, building construction, fire protection measures, nursing procedures, and preservation of medical records. No rule may be adopted with respect to building construction of existing medical hospitals or related medical institutions unless the rule relates to safety factors or the hospital or related medical institution changes the scope of service in such a way that a different license is required from the department pursuant to rules adopted under chapter 23-16.
5. Hold hearings on all matters brought before it by applicants and licensees of medical hospitals with reference to the denial, suspension, or revocation of licenses and make appropriate determination as specified herein.
6. ~~Regulate the expansion of long-term care facilities and services through the certificate of need process under chapter 23-17.2.~~

The council may direct the state health officer to do or cause to be done, any or all of the things which may be required in the proper performance of the various duties placed upon the state department of health.

SECTION 14. AMENDMENT. Subsection 4 of section 23-03-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. Enforce cleanliness in schools, and inspect overcrowded, poorly ventilated, and unsanitary schoolhouses and, when necessary, report cases of unsanitary or unsafe school buildings to the county board of health for investigation ~~as provided in section 15-47-23.~~

SECTION 15. AMENDMENT. Section 24-01-13 of the North Dakota Century Code is amended and reenacted as follows:

24-01-13. Enforcement of highway laws - Vehicle size and weight controlled.

The director and each officer and inspector of the department, designated by ~~him,~~ shall enforce the provisions of chapter 49-18, and has the director, have general police powers with respect to enforcement of all laws pertaining to the use of motor vehicles and trailers, other than passenger cars and motorcycles, upon the highways, roads, and streets of this state and may:

1. Classify highways and enforce limitations as to weight and load of vehicles thereon as provided for under section 39-12-01.
2. Issue special written permits authorizing the operation of oversized or overweight vehicles as provided for under section 39-12-02.
3. Prohibit the operation, or may impose restrictions on vehicular use of highways during certain seasons of the year as provided for under section 39-12-03.

SECTION 16. AMENDMENT. Subsection 13 of section 25-01.3-06 of the North Dakota Century Code is amended and reenacted as follows:

13. Contract with any person, public or private, to carry out any responsibilities of the project under this chapter and ~~sections section~~ section 25-01-01.1; ~~50-26-01; 50-26-03; 50-26-04; and 50-27-03.~~

² **SECTION 17. AMENDMENT.** Subsection 6 of section 26.1-08-01 of the North Dakota Century Code is amended and reenacted as follows:

6. "Insurance company" means a company or organization operating pursuant to chapter 26.1-17, ~~26.1-18~~ 26.1-18.1, or 26.1-36 and offering or selling accident and health insurance policies or health care or health service contracts. The term does not include a health service corporation operating under chapter 26.1-17 which does not write hospital or medical service contracts.

SECTION 18. AMENDMENT. Section 26.1-41-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-41-07. Persons not entitled to benefits. Basic or optional excess no-fault benefits are not payable to or on behalf of any person who is injured while:

1. Occupying any motor vehicle without the expressed or implied consent of the owner or while not in lawful possession of the motor vehicle.
2. Occupying a motor vehicle owned by such person which is not insured for the benefits required by this chapter unless uninsured solely because the insurance company of the owner has not filed a form pursuant to subsection 2 of section 26.1-41-05 to provide the basic no-fault benefits required by this chapter.
3. During a racing or speed contest, or in practicing or preparing for a racing or speed contest.
4. Intentionally causing or attempting to cause injury to oneself or another person.

SECTION 19. AMENDMENT. Subsection 4 of section 26.1-47-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Health care insurer" includes an insurance company as defined in section 26.1-02-01, a health service corporation as defined in section 26.1-17-01, a health maintenance organization as defined in section ~~26.1-18-01~~ 26.1-18.1-01, and a fraternal benefit society as defined in section ~~26.1-15-01~~ 26.1-15.1-02.

SECTION 20. AMENDMENT. Section 26.1-48-02 of the North Dakota Century Code is amended and reenacted as follows:

² Section 26.1-08-01 was also amended by section 1 of House Bill No. 1168, chapter 251.

26.1-48-02. North Dakota aftermarket risk contract. The sale of aircraft and aircraft components sold by an aviation manufacturer and the performance of any modification, maintenance, alteration, repair, or installation of components in aircraft in this state are governed by an aftermarket risk contract. The contract between the seller or aviation ~~manager~~ manufacturer and the purchaser must be executed at the time of purchase and reconsidered at each subsequent resale. The first and subsequent seller or aviation manufacturer shall agree to be bound by North Dakota law and the aftermarket risk contract or to provide a fully paid aftermarket product liability insurance policy that covers exposure to tort liability within the United States. The option of providing the insurance policy applies only to aircraft or aircraft components that sell for more than two thousand dollars.

SECTION 21. AMENDMENT. Subsection 3 of section 27-01-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The governing body of the county or city may determine the amount of the fee to be assessed in all cases or it may authorize the district or municipal judge to determine the amount of the fee to be assessed in each case. The fee assessed under this section is in addition to any fine, penalty, costs, or administrative fee prescribed by law. The ~~county~~ district or municipal judge may assess the fee when sentence is imposed or when sentence is suspended or imposition of sentence is deferred, unless the defendant is indigent and unable to pay the fee. All fees paid to a ~~county~~ district or municipal court under this section must be deposited monthly in the county or city treasury for allocation by the governing body of the county or city to one or more of the following programs as determined by the governing body:
 - a. A private, nonprofit domestic violence or sexual assault program.
 - b. A victim and witness advocacy program of which the primary function is to provide direct services to victims of and witnesses to crime.

SECTION 22. AMENDMENT. Section 28-20.1-02 of the North Dakota Century Code is amended and reenacted as follows:

28-20.1-02. Filing and status of foreign judgments. A copy of any foreign judgment authenticated in accordance with the act of Congress or the statutes of this state may be filed in the office of the clerk of any district court ~~or county court~~ of any county of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of the district court of any county of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a district court ~~or county court~~ of any county of this state and may be enforced or satisfied in like manner.

SECTION 23. AMENDMENT. Subsection 1 of section 28-20.1-03 of the North Dakota Century Code is amended and reenacted as follows:

1. At the time of filing of the foreign judgment, the judgment creditor or ~~his~~ the judgment creditor's lawyer shall make and file with the clerk of court an affidavit setting forth the name and last known post-office address of the judgment ~~creditor~~ debtor and otherwise complying with section 28-20-15.

³ **SECTION 24. AMENDMENT.** Subdivision q of subsection 1 of section 28-32-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- q. The superintendent of public instruction, except with respect to rules prescribed under section 15-21-07 ~~and rules implementing chapter 45-22.~~

SECTION 25. AMENDMENT. Subsection 7 of section 30.1-10-03 of the North Dakota Century Code is amended and reenacted as follows:

7. After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent's killer for purposes of this section. In the absence of a conviction, the court, upon the petition of an interested person, must determine whether, under the preponderance ~~of~~ of evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the court determines that, under that standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's killer for purposes of this section.

SECTION 26. AMENDMENT. Section 35-21-01 of the North Dakota Century Code is amended and reenacted as follows:

35-21-01. Release of lien by undertaking authorized. When any mechanic's lien, garage storage lien, repairman's lien, ~~seed lien, sugar beet production lien, crop production lien, threshing lien,~~ agricultural processor's lien, agricultural supplier's lien, unpaid earned insurance premium lien, or miner's lien is filed against the property of a resident of this state, the property affected may be released by an undertaking in the manner provided in this chapter.

SECTION 27. AMENDMENT. Subsection 6 of section 37-27-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. "Resident" means a person who has filed a resident North Dakota income tax return for the year prior to May 3, 1993, and who:
 - a. Was born in and lived in North Dakota until entrance into the armed forces of the United States;
 - b. Was born in, but was temporarily living outside North Dakota, not having abandoned North Dakota residence at the time of entrance into the armed forces of the United States;

³ Section 28-32-01 was also amended by section 1 of Senate Bill No. 2398, chapter 449; section 7 of Senate Bill No. 2033, chapter 182; section 8 of Senate Bill No. 2336, chapter 157; section 1 of House Bill No. 1042, chapter 278; section 6 of Senate Bill No. 2045, chapter 115; section 1 of House Bill No. 1183, chapter 451; and section 2 of House Bill No. 1158, chapter 277.

- c. Was born elsewhere but had resided in North Dakota for the last twelve months before entrance into military service and had prior to or during that ~~six-month~~ twelve-month period:
- (1) Voted in North Dakota;
 - (2) Was an emancipated minor during the period of residence or had lived with a parent or person standing in loco parentis who was a resident; or
 - (3) Was not registered for voting in another state after being a resident; or
- d. Was a bona fide resident of North Dakota at the time of entering the armed forces, as determined under the rules of the adjutant general and the laws of this state. A person is not a resident of North Dakota for the purpose of receiving any benefits under this chapter if the person was on continuous active duty in the armed forces for a period of seven years or more, immediately prior to the qualifying period of service, and has not established actual abode in North Dakota prior to May 3, 1993.

⁴ **SECTION 28. AMENDMENT.** Subsection 5 of section 38-08-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. To adopt and to enforce rules and orders to effectuate the purposes and the intent of this chapter and ~~of subsections 4, 4, 5, 6, and 8 of section 57-51.1-04~~ the commission's responsibilities under chapter 57-51.1.

SECTION 29. AMENDMENT. Subsection 3 of section 39-04-19 of the 1995 Supplement to the North Dakota Century Code as effective until June 30, 2000, is amended and reenacted as follows:

3. Motor vehicles acquired by disabled veterans under the provisions of Public Law 79-663 [38 U.S.C. ~~4904~~ 3901] are exempt from the payment of state sales or use tax and, if paid, such veterans are entitled to a refund. This exemption also applies to any passenger motor vehicle or pickup truck not exceeding ten thousand pounds [4535.92 kilograms] gross weight but shall apply to no more than two such motor vehicles owned by a disabled veteran at any one time.

SECTION 30. AMENDMENT. Subsection 3 of section 39-04-19 of the 1995 Supplement to the North Dakota Century Code as effective after June 29, 2000, is amended and reenacted as follows:

3. Motor vehicles acquired by disabled veterans under the provisions of Public Law 79-663 [38 U.S.C. ~~4904~~ 3901] are exempt from the payment of state sales or use tax and, if paid, such veterans are entitled to a refund. This exemption also applies to any passenger motor vehicle or

⁴ Section 38-08-04 was also amended by section 1 of House Bill No. 1194, chapter 317.

pickup truck not exceeding ten thousand pounds [4535.92 kilograms] gross weight but shall apply to no more than two such motor vehicles owned by a disabled veteran at any one time.

SECTION 31. AMENDMENT. Subsection 9 of section 41-09-28 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9. If a secured party who has perfected a security interest in crops or livestock, or if a lienholder who has created a lien by statute or otherwise; which includes liens for ~~threshing~~; crop or agricultural product processing; ~~crop production~~; fertilizer, farm chemicals, and seed; agricultural supplies; and landlord's lien; intends to impose liability for ~~such~~ the security interest or lien against a crop or livestock buyer, the name of the secured party or lienholder must appear on the most current list or lists distributed by the secretary of state pursuant to subsection 4 of section 41-09-46. In order to appear on the list or lists, secured parties or lienholders must file with the secretary of state or in the office of the register of deeds in any county in this state a form prescribed by the secretary of state which contains the information prescribed by the secretary of state under section 41-09-41 or contained on a form prescribed by the secretary of state under section 35-17-04, 35-30-02, or 35-31-02.

SECTION 32. AMENDMENT. Section 42-03-01 of the North Dakota Century Code is amended and reenacted as follows:

42-03-01. When dogs are a public nuisance. Any dog that habitually molests ~~persons~~ a person traveling peaceably on the public road; or street; is a public nuisance. Upon written complaint; ~~in writing~~; made to a county district or municipal judge; ~~containing a description of such~~ describing the dog, and giving ~~his~~ the name of the dog and ~~that of his~~ the dog's owner; if known, and, if not, so stating, and alleging that ~~such~~ the dog is a public nuisance, the county district or municipal judge shall give notice to the dog's owner ~~of such dog~~ that a complaint has been filed ~~in his office~~ that ~~such~~ the dog has been molesting certain persons and that the owner shall take the necessary action to prevent the dog from any further violations of this chapter. If the county district or municipal judge receives a further complaint regarding ~~such~~ the dog after notice has been given ~~to the owner that his dog has been molesting certain people~~ under this section, the county or municipal judge shall issue a summons, if ~~such~~ the owner is known, commanding ~~him~~ the owner to appear before the county or municipal judge at his office at a time ~~therein stated~~; in the same manner as other county or municipal judge court summonses.

SECTION 33. AMENDMENT. Section 42-03-03 of the North Dakota Century Code is amended and reenacted as follows:

42-03-03. Hearing - Judgment - Execution. On the day of hearing the county district or municipal judge shall hear the evidence in the case; ~~and, if he shall find therefrom.~~ If the judge finds that such the dog is a public nuisance, he shall enter judgment must be entered accordingly, and thereupon the judge shall order any peace officer to kill and bury the dog, which order the peace officer shall forthwith execute.

⁵ **SECTION 34. AMENDMENT.** Subsection 1 of section 45-22-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. In determining whether the underlying general partnership necessary for registration as a domestic limited liability partnership has been formed, the rules set forth in section ~~45-14-04~~ 45-14-02 apply.

SECTION 35. AMENDMENT. Section 46-05-01 of the North Dakota Century Code is amended and reenacted as follows:

46-05-01. Newspapers qualified to do legal printing - File copies with historical society - Publishing notices in adjoining county. Before any newspaper in this state is qualified to publish any legal notice or any matter required by law to be printed or published in some newspaper in the state, or any public notice for any political subdivision within this state, ~~such~~ the newspaper must:

1. Have been established in a regular and continuous circulation of at least one year, with a bona fide subscription list of at least one hundred fifty regular subscribers;
2. Be nonsectarian and printed at least three-fourths in English; and
3. Have been admitted to the United States mails and have complied with the requirements of the federal laws governing ~~second class mail~~ periodicals mailing privileges for at least one year.

In the county where no newspaper having the above-prescribed qualifications is published, any newspaper at the county seat of ~~said~~ that county is entitled to publish ~~such~~ the legal notices even though it may not have been established one year. The owner or publisher of each legal newspaper shall send to the state historical board, to ~~such~~ the address as ~~must be~~ designated by the secretary ~~thereof~~, two copies of each issue of ~~such~~ the newspaper. In a county in which no newspaper is published, any notice required by law to be published may be published in a newspaper published in an adjoining county and having a general circulation in ~~said~~ the county.

SECTION 36. AMENDMENT. Subsection 2 of section 47-02-27.5 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. If a contingent property interest or a power of appointment was created before July 1, 1991, and is determined in a judicial proceeding, commenced on or after July 1, 1991, to violate this state's rule against perpetuities as that rule existed before July 1, 1991, a court upon the petition of an interested person may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable ~~it~~ when the contingent property interest or power of appointment was created.

⁵ Section 45-22-03 was also amended by section 224 of Senate Bill No. 2344, chapter 103.

⁶ **SECTION 37. AMENDMENT.** Section 50-06-01.8 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-06-01.8. Department to seek waiver to establish welfare reform demonstration project - Interim rulemaking. The department of human services shall seek, from appropriate federal officials, authorization to establish a demonstration project to combine the benefits provided under the state's aid to families with dependent children, fuel assistance, and food stamp programs, pursuant to title IV-A of the Social Security Act [42 U.S.C. 601 et seq.], the low-income home energy assistance program [42 U.S.C. 8621-8629], and the Food Stamp Act [7 U.S.C. 2011-2027]. The demonstration project established under this section must provide for uniform and consistent treatment of income and assets in determining eligibility; provide for the creation of a uniform method of budgeting and computing benefits, a consistent certification period for the receipt of benefits, and uniform reporting requirements; provide for necessary child care to allow a participant to meet educational and employment goals; and provide for universal employment and training to assist individuals in becoming self-sufficient. The project may be administered notwithstanding the requirements of subsections 4 and 5 of section ~~50-04-09~~ 50-01.2-03, section 50-03-07, subsections 17 and 19 of section 50-06-05.1, chapter 50-09, and section 50-11.1-11.1, relating to the administration of the aid to families with dependent children, fuel assistance, and food stamp programs, except that a county shall reimburse the state for expenditures for the aid to families with dependent children program in that county as required by section 50-09-21. The demonstration project may require any participant to cooperate with child support enforcement efforts. The department of economic development and finance, job service North Dakota, county social service boards, and any other state agency determined appropriate, shall cooperate with the department to ensure the success of the project. Local government agencies within the demonstration project counties are encouraged to cooperate with the department. Rules adopted to implement the demonstration project may be adopted as interim final rules without a finding that emergency rulemaking is necessary, and the interim final rules may take effect on a date no earlier than the date of filing with the legislative council of the notice of proposed adoption of a rule required by subsection 4 of section 28-32-02.

⁷ **SECTION 38. AMENDMENT.** Subdivision a of subsection 4 of section 54-52-17 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. Normal retirement benefits for all retirees, except supreme and district court judges ~~and national guard security officers or firefighters~~, reaching normal retirement date equal an annual amount, payable monthly, comprised of a service benefit and a prior service benefit, as defined in this chapter, which is determined as follows:
 - (1) Service benefit equals one and seventy-four hundredths percent of final average salary multiplied by the number of years of service employment.

⁶ Section 50-06-01.8 was also amended by section 51 of House Bill No. 1226, chapter 404, and section 52 of House Bill No. 1226, chapter 404.

⁷ Section 54-52-17 was also amended by section 1 of House Bill No. 1137, chapter 463, and section 2 of House Bill No. 1137, chapter 463.

- (2) Prior service benefit equals one and seventy-four hundredths percent of final average salary multiplied by the number of years of prior service employment.
- (3) All participants who retired before January 1, 1994, are entitled to benefits calculated at one and seventy-four hundredths percent of final average salary, multiplied by the number of years of service employment, with the increased benefits payable beginning January 1, 1994.

⁸ **SECTION 39. AMENDMENT.** Section 54-56-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-56-01. Children's services coordinating committee - Membership. The children's services coordinating committee is hereby established and consists of the governor or a designee of the governor, the attorney general or a designee of the attorney general, the commissioner of the board of higher education or a designee of the commissioner, the superintendent of public instruction, the executive director of the department of human services, the state health officer, the executive director of job service North Dakota or a designee of the executive director, the director of the department of corrections and rehabilitation; or a designee of the director of the department of corrections and rehabilitation, the director of the office of management and budget; or a designee of the director of the office of management and budget, the director of vocational and technical education, ~~the chairperson of the governor's committee on children and youth or that chairperson's designee,~~ a representative of the Indian affairs commission, a designee of the chief justice, and a member at large to be appointed by the governor. The governor or the governor's designee shall act as chairperson.

SECTION 40. REPEAL. Sections 32-03-19 and 32-03-26 of the North Dakota Century Code and section 29-01-32 of the 1995 Supplement to the North Dakota Century Code are repealed.

Approved April 8, 1997
Filed April 8, 1997

⁸ Section 54-56-01 was also amended by section 9 of Senate Bill No. 2014, chapter 43.

CHAPTER 52

HOUSE BILL NO. 1065

(Legislative Council)
 (Judiciary Committee)
 (Representatives Kretschmar, Nottestad)
 (Senators W. Stenehjem, Traynor, LaFountain)

ACTS PERFORMED ON SATURDAYS

AN ACT to amend and reenact section 1-03-05 and subsection 1 of section 16.1-01-09 of the North Dakota Century Code, relating to acts performed on Saturdays and business days.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 1-03-05 of the North Dakota Century Code is amended and reenacted as follows:

1-03-05. Act due on Saturday or holiday performed on next day. Whenever an act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, ~~which that~~ that falls upon a Saturday or a holiday, ~~such the~~ act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.

⁹ **SECTION 2. AMENDMENT.** Subsection 1 of section 16.1-01-09 of the North Dakota Century Code is amended and reenacted as follows:

1. a. A request of the secretary of state for approval of a petition to initiate or refer a measure may be presented over the signatures of the sponsoring committee on individual signature forms that have been notarized. The secretary of state shall prepare a signature form that includes provisions for identification of the measure; the printed name, signature, and address of the committee member; and notarization of the signature.
- b. Upon receipt of a petition to initiate or refer a measure, the secretary of state shall draft a short and concise statement ~~which must that~~ fairly represent ~~represents~~ the measure. The statement must be submitted to the attorney general for approval or disapproval. An approved statement must be affixed to the petition before it is circulated for signatures, must be called the "ballot title", and must be placed immediately before the full text of the measure.

⁹ Section 16.1-01-09 was also amended by section 1 of Senate Bill No. 2044, chapter 188.

- c. The secretary of state and the attorney general shall complete their review of a petition in not less than five, nor more than seven, business days, excluding Saturdays.

Approved January 31, 1997

Filed January 31, 1997

CHAPTER 53**SENATE BILL NO. 2365**

(Senators Sand, Lips)
(Representatives Coats, Gorder, Hausauer)

FOUR CHAPLAINS SUNDAY

AN ACT to create and enact section 1-03-12 of the North Dakota Century Code, relating to the designation of Four Chaplains Sunday.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 1-03-12 of the North Dakota Century Code is created and enacted as follows:

Four Chaplains Sunday. Each year the governor shall issue a proclamation designating the first Sunday of February as Four Chaplains Sunday in honor of the four United States army chaplains, George L. Fox, Alexander D. Goode, Clark V. Poling, and John P. Washington, who sacrificed their own lives to save the lives of other servicemen on the Dorchester, a United States army troop transport ship that was sunk off the coast of Greenland on February 3, 1943.

Approved March 21, 1997

Filed March 21, 1997

CHAPTER 54

SENATE BILL NO. 2071

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

ELECTRONICALLY FILED DOCUMENTS

AN ACT to create and enact a new section to chapter 1-08 and a new subsection to section 57-51-06 of the North Dakota Century Code, relating to alternative methods of signing, subscribing, or verifying documents and oil and gas tax returns; and to amend and reenact sections 57-38-31, 57-38-32, subsection 3 of section 57-39.2-11, sections 57-43.1-04, 57-43.1-16, and 57-43.2-12 of the North Dakota Century Code, relating to alternative methods of signing, subscribing, or verifying income, sales, use, motor vehicle fuels, and special fuels tax returns.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 1-08 of the North Dakota Century Code is created and enacted as follows:

Alternative methods of signing, subscribing, or verifying documents filed by electronic means. A state agency, as defined in section 32-12.1-02, charged by law with the duty of receiving signed, subscribed, or verified documents may accept such documents filed by electronic means, including telecommunications. The secretary of state shall adopt rules in the manner provided in chapter 28-32 to govern methods for signing, subscribing, or verifying documents filed by electronic means, except documents filed with the tax commissioner. A signature on a document filed by electronic means which is accepted by the state agency and complies with the rules of the secretary of state has the same validity and consequence as the actual signature and written declaration for a paper document.

SECTION 2. AMENDMENT. Section 57-38-31 of the North Dakota Century Code is amended and reenacted as follows:

57-38-31. Duty of individuals and fiduciaries to make return.

1. Every resident individual, every fiduciary for a resident individual, estate, or trust, who is required by the provisions of the United States Internal Revenue Code of 1954, as amended, to file a federal income tax return, and every individual or fiduciary who receives income derived from sources in this state, shall file an income tax return with the state tax commissioner in such form as the commissioner may prescribe. Any person who is required to file a state income tax return but not required to compute a federal taxable income figure for federal income tax purposes is required to compute such a federal taxable income figure using a pro forma return pursuant to the provisions of the Internal Revenue Code of 1954, as amended, in order to determine a starting point for the computation of state income tax. Any person required to file an income tax return pursuant to the provisions of the United States Internal Revenue Code of 1954, as amended, with respect to income that is exempt from taxation under this chapter either because it cannot be constitutionally taxed or because it is exempt by any provision of law

- shall file a return prescribed by the tax commissioner in such form as will permit computation of the tax liability under this chapter on only that part of the income which is subject to taxation pursuant to the provisions of this chapter; provided, that such person elects to use that form of return rather than any other form of return that may be prescribed. The return must be signed by the person required to make it and must contain a written declaration that it is made and subscribed under penalties of perjury.
2. The same filing status and deduction method used by a husband and wife when filing federal income tax returns must be used when filing state income tax returns. If either spouse is a resident and the other is a nonresident, separate state income tax returns must be filed.
 3. If the taxpayer is unable to make ~~his~~ the taxpayer's own return, the return must be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer.
 4. Every fiduciary subject to taxation under the provisions of this chapter shall make a return for the individual, estate, or trust for which ~~he~~ the fiduciary acts; the return must be signed by the person required to make it and must contain a written declaration that it is made and subscribed under penalties of perjury.
 5. The return made by a fiduciary must state such facts as the tax commissioner may prescribe.
 6. A fiduciary required to make a return under this chapter is subject to all of the provisions of the chapter which apply to an individual.
 7. ~~The~~ If required by the tax commissioner, the return must be accompanied by a true copy of the federal income tax return of the taxpayer or by equivalent information ~~on forms furnished and under regulations promulgated~~ in the form and manner prescribed by the state tax commissioner if required by the tax commissioner, or a. A true copy of the federal income tax return of the taxpayer or equivalent information must be furnished to the tax commissioner by the taxpayer or fiduciary at any time after ~~he has filed~~ filing of the return required by this chapter if so required by the tax commissioner.
 8. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return.

SECTION 3. AMENDMENT. Section 57-38-32 of the North Dakota Century Code is amended and reenacted as follows:

57-38-32. Duty of corporations to make returns. Each corporation that receives income from the sources designated in section 57-38-30, whether or not required to file an income tax return pursuant to the provisions of the United States Internal Revenue Code of 1954, as amended, shall, unless exempted by the provisions of section 57-38-09, make a return in such form as the tax commissioner may prescribe, stating specifically such facts as the tax commissioner may require for the purpose of making any computation required by this chapter. Any corporation

which is required to file a state income tax return but not required to compute a federal taxable income figure for federal income tax purposes is required to compute such a federal taxable income figure using a pro forma return pursuant to the provisions of the Internal Revenue Code of 1954, as amended, in order to determine a starting point for the computation of state income tax. Any foreign loan and investment company engaged in business in this state, and whose income in this state consists solely of income exempt from taxation under this chapter, need not file an annual report unless specially requested to do so by the tax commissioner, but may file in lieu thereof an affidavit claiming exemption under this chapter. The return must be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or any other officer duly authorized so to act and it and any other declaration, statement, or document required to be made must contain or be verified by a written declaration that it is made under the penalties of perjury. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return.

SECTION 4. AMENDMENT. Subsection 3 of section 57-39.2-11 of the North Dakota Century Code is amended and reenacted as follows:

3. Returns must be signed by the retailer or a duly authorized agent of the retailer and must contain a written declaration that they are made and subscribed under the penalties of this chapter. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return.

¹⁰ **SECTION 5. AMENDMENT.** Section 57-43.1-04 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-04. Form of claim for refund. A refund claim must be on a form furnished by the commissioner and must have a written declaration by the claimant that it is made under the penalties of perjury. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return. The refund claim must state that the motor vehicle fuel was used or is to be used by the claimant other than in motor vehicles operated or intended to be operated upon the public highways of this state, the manner in which the motor vehicle fuel was used or is to be used, the equipment in which the motor vehicle fuel was used, or in which it will be used, and such other information as the commissioner requires. The original invoice or invoices indicating the purchase of motor vehicle fuel on which the refund is claimed must be attached to the refund claim. If the original invoice or invoices are lost, the claimant may substitute duplicate invoices plus a separate affidavit on forms prescribed by the commissioner. A certified history of purchases detailing required information may be accepted by the commissioner in lieu of original sales invoices or sales tickets.

¹⁰ Section 57-43.1-04 was also amended by section 4 of House Bill No. 1311, chapter 498.

SECTION 6. AMENDMENT. Section 57-43.1-16 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-16. Report by dealer to commissioner. Each dealer in motor vehicle fuel who engages in the sale or use of motor vehicle fuel in this state shall render to the commissioner, not later than the twenty-fifth day of each calendar month, on the form prescribed, prepared, and furnished by the commissioner, a statement of the number of gallons [liters] of motor vehicle fuel sold, used, received, and delivered by that dealer during the preceding calendar month. If the commissioner deems it necessary to ensure the payment of the tax imposed by this chapter, the commissioner may require returns and payment of the tax to be made for periods other than monthly periods. If the dealer is a domestic corporation, the statement must be signed by the president or secretary, and if a foreign corporation, by the resident general agent, attorney in fact, or by a chief accountant or officer. If the dealer is a domestic ~~limited liability~~ limited liability company, the statement must be signed by the president or treasurer, and if a foreign limited liability company, by the resident agent, president, or treasurer. If the dealer is a firm, or an association of individuals, the statement must be made by the managing agent or owner. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return. The report must contain a statement of the quantities of motor vehicle fuel sold, used, received, and delivered within this state from the dealer's place of business. If any motor vehicle fuel has been sold and delivered by the dealer to customers in the original package, whether in tank car, barrel, or other package, and in the form and condition in which the same was imported, the statement must show the amount of motor vehicle fuel so sold and delivered, and the names and addresses of the persons to whom it was sold and delivered.

SECTION 7. AMENDMENT. Section 57-43.2-12 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-12. Monthly returns and payments. Each special fuel dealer shall file with the commissioner on forms prescribed by the commissioner a monthly tax return to determine the amount of liability for the tax imposed by this chapter. The returns must contain a written declaration that they are made and subscribed under the penalties of perjury. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return. The return must show, with reference to each location at which special fuel is sold, delivered, or placed by the dealer, such information as the commissioner may reasonably require for the proper administration and enforcement of this chapter. The special fuel dealer shall file the return on or before the twenty-fifth day of the next succeeding calendar month following the monthly period to which it relates. The reports are considered filed on time if mailed in an envelope properly addressed to the commissioner and postmarked before midnight of the final filing date. The commissioner may, for good cause, grant a taxpayer a reasonable extension of time for filing a return. Each special fuel dealer shall compute the tax imposed by this chapter by multiplying the rate of tax per gallon [3.79 liters] by the number of gallons [liters] of special fuel sold or delivered to special fuel users. The monthly tax return must be accompanied by remittance covering the tax due on special fuels sold or delivered to special fuel users during the preceding month.

¹¹ **SECTION 8.** A new subsection to section 57-51-06 of the North Dakota Century Code is created and enacted as follows:

The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return.

Approved April 2, 1997

Filed April 3, 1997

¹¹ Section 57-51-06 was also amended by section 1 of Senate Bill No. 2155, chapter 501.

AERONAUTICS

CHAPTER 55

SENATE BILL NO. 2145

(Senators Tomac, Lips)
(Representatives Carlisle, Grumbo)

AERONAUTICS COMMISSION CEASE AND DESIST ORDERS

AN ACT to create and enact two new sections to chapter 2-05 of the North Dakota Century Code, relating to cease and desist authority for the aeronautics commission and assessment of civil money penalties by the aeronautics commission; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 2-05 of the North Dakota Century Code is created and enacted as follows:

Cease and desist orders. The aeronautics commission may issue and serve upon any person, engaged in aerial spraying, an order to cease and desist when the commission has reason to believe the person is violating, has violated, or is attempting to violate this chapter or any rule adopted by the commission. An interested party may appeal the issuance of a cease and desist order under chapter 28-32 by filing written notice of appeal within seven days after service of the order. A hearing must be held within ten days after a notice of appeal has been timely filed. A person who has been issued an order to cease and desist that has been determined to be final either through default or an adjudicative proceeding may not engage in aerial spraying for any other commercial applicator in this state.

SECTION 2. A new section to chapter 2-05 of the North Dakota Century Code is created and enacted as follows:

Assessment of civil money penalties. The aeronautics commission may impose civil money penalties against any person willfully violating an order to cease and desist or any provision of this chapter or any of the rules adopted by the commission in an amount not to exceed five hundred dollars for each violation. As used in this section, the term "willfully" means that the person engaged in the conduct intentionally, knowingly, or recklessly. An interested party may appeal the assessment of civil money penalties under chapter 28-32 by filing written notice of appeal within twenty days after service of the assessment of civil money penalties. A civil money penalty collected under this section must be paid to the state treasurer and deposited in the aeronautics commission's special fund.

Approved April 8, 1997
Filed April 8, 1997

AGRICULTURE

CHAPTER 56

HOUSE BILL NO. 1305

(Representatives Monson, Olson, Nichols)
(Senators Heitkamp, Sand, Thane)

HEMP PRODUCTION STUDY

AN ACT to provide for a study of industrial hemp production by the agricultural experiment station.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. North Dakota agricultural experiment station - Study of industrial hemp production. The North Dakota agricultural experiment station shall study the feasibility and desirability of industrial hemp production in this state. The study may include an analysis of required soils and growing conditions, seed availability, harvest methods, market economies, environmental benefits, and law enforcement concerns. The North Dakota agricultural experiment station shall present its report to the legislative council before August 1, 1998.

Approved March 23, 1997
Filed March 24, 1997

CHAPTER 57

SENATE BILL NO. 2025

(Legislative Council)

(Budget Committee on Agriculture and Information Services)

(Senators Robinson, C. Nelson)

(Representative Nicholas)

AGRICULTURAL RESEARCH EXTENSION CENTERS

AN ACT to amend and reenact sections 4-05.1-01, 4-05.1-03, 4-05.1-04, 4-05.1-05, 4-05.1-06, 4-05.1-07, 4-05.1-08, 4-05.1-09, 4-05.1-10, 4-05.1-11, 4-05.1-12, and 4-05.1-15 of the North Dakota Century Code, relating to the agricultural experiment station; and to repeal sections 4-05.1-07.1 and 4-05.1-13 of the North Dakota Century Code, relating to grant funds of the Williston research center and the board of visitors of the north central research center.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ **SECTION 1. AMENDMENT.** Section 4-05.1-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-05.1-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Agricultural experiment station" means the North Dakota state university main research ~~station~~ center, the Dickinson research extension center, the Williston research extension center, the Langdon research extension center, the central grasslands research extension center, the Carrington research extension center, the Hettinger research extension center, the north central research extension center, the agronomy seed farm, and any other department or agency designated by the state board of higher education.
2. "Director" means the director of the North Dakota agricultural ~~experiment station~~.
3. "~~Superintendent~~" "Center director" means an administrator in charge of a research or research extension center.
3. "Station director" means the administrator of the agricultural experiment station.

² **SECTION 2. AMENDMENT.** Section 4-05.1-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

¹ Section 4-05.1-01 was also amended by section 17 of Senate Bill No. 2064, chapter 50.

² Section 4-05.1-03 was also amended by section 19 of Senate Bill No. 2064, chapter 50.

4-05.1-03. Director - Superintendents Center directors - Research station and research extension centers - Records and information. The director is under the direction of the president of the North Dakota state university of agriculture and applied science. The research station and research extension centers of the North Dakota agricultural experiment station are under the jurisdiction of the station director. Each research or research extension center must be administered by a superintendent center director who shall report to the station director. Each research or research extension center shall keep detailed records of all research activities and publish and disseminate research results and information for the benefit of this state.

³ **SECTION 3. AMENDMENT.** Section 4-05.1-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-05.1-04. Reports to station director and state board of higher education. Each superintendent center director shall submit a biennial report to the station director on or before the first day of August of each odd-numbered year. Each report must set forth in detail the investigations and experiments made during the preceding fiscal biennium, recommendations for the welfare of the center, the financial condition of the center, how all moneys have been expended, and the results of experiments. The station director shall submit these reports, with a biennial report of the North Dakota state university main research station center, to the board of higher education on or before the first day of September of each odd-numbered year. If the board of higher education submits a biennial report to the governor and the secretary of state in accordance with section 54-06-04, the report must include a composite of the reports from the research station and each research and research extension center.

SECTION 4. AMENDMENT. Section 4-05.1-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-05.1-05. North Dakota state university main research station center. The North Dakota state university main research station center must be located on the campus of North Dakota state university of agriculture and applied science. The station center is the administrative location of the agricultural experiment station. The station center shall conduct research and coordinate all research activities of the agricultural experiment station. The research must have as a purpose, the development and dissemination of technology important to the production and utilization of food, feed, fiber, and fuel from crop and livestock enterprises. The research must provide for an enhancement of the quality of life, sustainability of production, and protection of the environment. The research station shall keep detailed records of all research activities and publish the information that will be of value to the residents of this state.

SECTION 5. AMENDMENT. Section 4-05.1-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-05.1-06. Dickinson research extension center. The Dickinson research extension center must be located at or near Dickinson in Stark County. The center shall conduct research on increasing the carrying capacity of native rangeland, with

³ Section 4-05.1-04 was also amended by section 20 of Senate Bill No. 2064, chapter 50.

emphasis on conservation and preservation for future generations. The center shall conduct research on grass production to determine how to best compensate for the vagaries of the weather as it influences forage production in the ~~dryland~~ agriculture of western North Dakota. The center shall conduct research at the ranch location in Dunn County with beef cattle and swine breeding, feeding, management, and disease control for the benefit of livestock producers of western North Dakota and the entire state. The center shall conduct research designed to increase productivity of all agricultural products of the soil by maintaining or improving the soil resource base in the ~~dryland~~ agricultural region of southwestern North Dakota by the identification of adapted crop species and superior crop cultivars; propagation and distribution of selected seed stock; and development of profitable cropping systems that achieve the necessary balance between profitability and conservation of all natural resources. ~~The center shall disseminate research results and information for the benefit of this state.~~

SECTION 6. AMENDMENT. Section 4-05.1-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-05.1-07. Williston research extension center. The Williston research extension center must be located at or near Williston in Williams County. The center shall conduct research designed to increase productivity of all agricultural products of the soil while maintaining or improving the soil resource base in the ~~dryland~~ agricultural region of northwestern North Dakota by the identification of adapted crop species and superior crop cultivars; propagation and distribution of selected seed stocks; and development of profitable cropping systems that achieve the necessary balance between profitability and conservation of all natural resources. ~~The center shall disseminate research results and information for the benefit of this state.~~

SECTION 7. AMENDMENT. Section 4-05.1-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-05.1-08. Langdon research extension center. The Langdon research extension center must be located at or near Langdon in Cavalier County. The center shall conduct research designed to increase productivity of all agricultural products of the soil while maintaining or improving the soil resource base in the ~~dryland~~ agricultural region of northeastern North Dakota by the identification of adapted crop species and superior crop cultivars; propagation and distribution of selected seed stocks; and development of profitable cropping systems that achieve the necessary balance between profitability and conservation of all natural resources. ~~The center shall disseminate research results and information for the benefit of this state.~~

SECTION 8. AMENDMENT. Section 4-05.1-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-05.1-09. Central grasslands research extension center. The central grasslands research extension center must be located within an area bounded by the Missouri River on the west and the James River on the east. The center shall conduct research designed to fulfill needs within an area bounded by the Missouri River on the west and the James River on the east. Research objectives must be to increase the range-carrying capacity of native range, with emphasis on conservation and preservation for future generations; stabilization of grass production to discover how to best compensate for the vagaries of the weather and precipitation as it influences forage production in a ~~dryland~~ agriculture; identification of the impact of different management systems upon beef production in the central region of the

state; and exploration of increased use of crop residues and byproducts for the maintenance of the cow herd.

SECTION 9. AMENDMENT. Section 4-05.1-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-05.1-10. Carrington research extension center. The Carrington research extension center must be located at or near Carrington in Foster County. The center shall conduct research designed to determine the potential of irrigated agriculture in the region proposed for irrigation development in the state which must be related to both crop and livestock production. The center shall conduct research designed to increase productivity of all agricultural products of the soil while maintaining or improving the soil resource base in the ~~dryland and irrigated~~ agricultural region of east central North Dakota by the identification of adapted crop species and superior crop cultivars; propagation and distribution of selected seed stocks; and development of profitable cropping and integrated crop and livestock systems that achieve the necessary balance between profitability and conservation of all natural resources. ~~The center shall disseminate research results and information for the benefit of this state.~~

SECTION 10. AMENDMENT. Section 4-05.1-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-05.1-11. Hettinger research extension center. The Hettinger research extension center must be located at or near Hettinger in Adams County. The center shall develop the best available technology in breeding, feeding, management, and disease control pertinent to the production of sheep in the state. The center shall conduct research designed to increase productivity of all agricultural products of the soil while maintaining or improving the soil resource base in southwestern North Dakota by the identification of adapted crop species and superior crop cultivars; propagation and distribution of selected seed stocks; and development of profitable cropping systems that achieve the necessary balance between profitability and conservation of all natural resources. ~~The center shall disseminate research results and information for the benefit of this state.~~

SECTION 11. AMENDMENT. Section 4-05.1-12 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-05.1-12. North central research extension center. The north central research extension center must be located at or near Minot in Ward County. The center shall conduct research designed to increase productivity of all agricultural products of the soil while maintaining or improving the soil resource base in the ~~dryland~~ agricultural region of north central North Dakota by the identification of adapted crop species and superior crop cultivars; propagation and distribution of selected seed stocks; and development of profitable cropping systems which achieve the necessary balance between profitability and conservation of all natural resources. ~~The center shall disseminate research results and information for the benefit of this state.~~

SECTION 12. AMENDMENT. Section 4-05.1-15 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-05.1-15. Agronomy seed farm - Investment of reserve income fund. The state treasurer, at the direction of the ~~superintendent~~ center director of the agronomy seed farm with the approval of the ~~station director of the North Dakota agricultural experiment station,~~ shall provide for the investment of available moneys in the

agronomy seed farm reserve income fund. The state treasurer shall credit the investment income to the agronomy seed farm reserve income fund. The moneys in the fund may be spent only within the limits of legislative appropriation.

SECTION 13. REPEAL. Sections 4-05.1-07.1 and 4-05.1-13 of the 1995 Supplement to the North Dakota Century Code are repealed.

Approved March 7, 1997

Filed March 10, 1997

CHAPTER 58

SENATE BILL NO. 2024

(Legislative Council)
(Budget Committee on Agriculture and Information Services)
(Senators Robinson, Kinnoin)
(Representative Martin)

EXTENSION AGENTS

AN ACT to amend and reenact sections 4-08-01, 4-08-02, 4-08-03, 4-08-04, 4-08-05, 4-08-06, 4-08-07, 4-08-09, 4-08-10, 4-08-11, 4-08-12, 4-08-13, 4-08-14, 4-08-15, 4-08-15.1, and subsections 4 and 5 of section 57-15-06.7 of the North Dakota Century Code, relating to the North Dakota state university extension service and extension agents; and to repeal section 9 of chapter 34 of the 1989 Session Laws, relating to extension service area resource centers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-08-01 of the North Dakota Century Code is amended and reenacted as follows:

4-08-01. ~~County agent~~ Extension work - Petition - Submitting to vote. Upon the filing with the county auditor of a petition containing the names of twenty percent of the qualified electors of the county as determined by the votes cast for governor in the county at the last preceding election, the board of county commissioners shall submit to the qualified electors at the next general election the question of providing a tax levy for ~~county agent~~ extension work.

SECTION 2. AMENDMENT. Section 4-08-02 of the North Dakota Century Code is amended and reenacted as follows:

4-08-02. Form of petition. The petition provided for in section 4-08-01 must be in substantially the following form:

PETITION PROVIDING FOR LEVY FOR ~~COUNTY AGENT~~
EXTENSION WORK

We, the undersigned, qualified electors of _____ County, North Dakota, ~~do hereby respectfully~~ petition the ~~honorable~~ board of county commissioners that it levy a tax sufficient but not to exceed two mills to employ a ~~county~~ an extension agent for the purpose of carrying on ~~county agent~~ extension work in cooperation with the North Dakota state university ~~of agriculture and applied science~~ extension service.

SECTION 3. AMENDMENT. Section 4-08-03 of the North Dakota Century Code is amended and reenacted as follows:

4-08-03. Form of ballot. The question to be voted upon as provided in section 4-08-01 must be submitted on a separate ballot and must be worded as follows:

For ~~county agent~~ extension work _____

Against ~~county agent~~ extension work _____ □

SECTION 4. AMENDMENT. Section 4-08-04 of the North Dakota Century Code is amended and reenacted as follows:

4-08-04. Election held - Candidates presented to county commissioners - Funds available for ~~county agent~~ extension work. When a majority of the votes are cast for ~~county agent~~ extension work, the ~~extension division of the North Dakota state university of agriculture and applied science~~ extension service on the first day of July following the election shall present a candidate or candidates for ~~county~~ extension agent to the board of county commissioners for its selection and final approval. A sum of not less than two thousand dollars must be made available for this purpose from county funds, but in no case may such levy exceed two mills.

SECTION 5. AMENDMENT. Section 4-08-05 of the North Dakota Century Code is amended and reenacted as follows:

4-08-05. Petition for discontinuance of ~~county agent~~ extension work - Form of petition - Election. The question of the discontinuance of ~~county agent~~ extension work may be submitted to the qualified electors in the manner provided in section 4-08-01. A separate ballot worded as is provided in section 4-08-03 must be used at the election. The petition for discontinuing the levy must be in the following form:

We, the undersigned qualified electors of _____ County, North Dakota, ~~do hereby~~ petition the ~~honorable~~ board of county commissioners that it place on the ballot at the next general election the question of discontinuing ~~county agent~~ extension work.

SECTION 6. AMENDMENT. Section 4-08-06 of the North Dakota Century Code is amended and reenacted as follows:

4-08-06. Filing date of petitions for election. No board of county commissioners may place the question of ~~county agent~~ extension work on a ballot without having received a notification from the county auditor that the petitions, as provided for in this chapter, have been filed at least thirty days before the date of election.

SECTION 7. AMENDMENT. Section 4-08-07 of the North Dakota Century Code is amended and reenacted as follows:

4-08-07. Discontinuance of ~~county~~ extension agent - Distribution of funds accumulated. If a majority of the votes cast at an election held under the ~~provisions of~~ section 4-08-05 are against continuing the levy for ~~county agent~~ extension work, the tax levy and the services of the extension agent must be discontinued on the thirty-first day of December following the date of election. If the majority of the votes cast are for the support of ~~county agent~~ extension work, the county commissioners shall continue the tax levy as provided in this chapter. Upon the discontinuance of ~~county agent~~ extension work, accumulated funds remaining in the treasury may be distributed to any other fund or funds deemed expedient by the board of county commissioners.

SECTION 8. AMENDMENT. Section 4-08-09 of the North Dakota Century Code is amended and reenacted as follows:

4-08-09. Budgeting for ~~county~~ extension agent. When the board of county commissioners is authorized to make a levy for the employment of a ~~county~~ an

extension agent, it shall provide a budget ~~which must stipulate that stipulates~~ the salary of the agent, field and office expenses, and allowance for clerical hire. After mutually agreeing upon a budget and after deducting the amount of funds contributed from federal and state funds, the board shall proceed to make a levy or appropriate funds out of the county general fund or both as it may deem necessary to cover the county's share of the budget. Until the office of county extension agent is discontinued, the board shall agree upon a similar budget must be agreed upon and annually ~~such shall make the levy and appropriation must be made by the board.~~

SECTION 9. AMENDMENT. Section 4-08-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-08-10. County Extension agent to submit monthly account of expenditures.

The county extension agent shall submit monthly an accurate itemized account of all expenditures incurred by the county agent in the regular conduct of duties to the North Dakota state university extension service for examination and audit. ~~Where~~ When charges are made by a county extension agent for money expended in the performance of official duties, all items of one dollar or more ~~so~~ expended and charged for must be covered by a subvoucher or receipt ~~which that~~ must be signed by the person to whom the money was paid. The subvoucher or receipt must show at what place, on what date, and for what; the money expended was paid. The extension agent shall forward the subvouchers or receipts must be forwarded with the bill, claim, account, or demand against the county. ~~Where~~ When charges are made for transportation expenses, they ~~must~~ may not exceed the amounts provided by section 11-10-15, and must be in itemized form showing the mileage traveled, the days when and how traveled, and the purpose thereof, verified by affidavit. The account must be transmitted and recommended for payment by the North Dakota state university extension service which shall audit the same and which may approve or disallow any expense item therein. The North Dakota state university extension service is under the control, and subject to the supervision, of the state board of higher education. Funds appropriated to the North Dakota state university extension service may not be commingled with funds appropriated to North Dakota state university. An appropriation request to defray expenses of the North Dakota state university extension service must be separate from an appropriation request to defray expenses of North Dakota state university.

SECTION 10. AMENDMENT. Section 4-08-11 of the North Dakota Century Code is amended and reenacted as follows:

4-08-11. County agents make monthly report Report to county auditor. ~~A county~~ An extension agent shall file with the county auditor either monthly, or within a mutually agreed upon timeframe not to exceed one year, a statement of ~~his~~ the agent's work, which, in turn, must be presented by the auditor to the board of county commissioners.

SECTION 11. AMENDMENT. Section 4-08-12 of the North Dakota Century Code is amended and reenacted as follows:

4-08-12. Direction and supervision of county agents extension agent. The active direction and supervision of the work of the county extension agent must be carried on by the ~~extension division of the North Dakota state university of agriculture and applied science extension service.~~ The board of county commissioners has general administrative authority and must be consulted frequently with reference to the general policy and the work of the ~~agents~~ agent. The suggestions and directions of the board must be followed when not in conflict with

state and federal laws or regulations governing appropriations for county agent extension work.

SECTION 12. AMENDMENT. Section 4-08-13 of the North Dakota Century Code is amended and reenacted as follows:

4-08-13. Vacancies - How to be filled. In case a vacancy occurs in the position of county extension agent, the procedure for the selection of a successor must be similar to that provided for in the selection of an agent when the work is instituted in the county.

SECTION 13. AMENDMENT. Section 4-08-14 of the North Dakota Century Code is amended and reenacted as follows:

4-08-14. Dissatisfaction with county extension agent - Meeting to be arranged. If the ~~extension division of the North Dakota state university of agriculture and applied science~~ extension service or the board of county commissioners becomes dissatisfied with a county an extension agent, a joint meeting must be arranged at which detailed information as to the misconduct, negligence, or inefficiency of the agent must be presented and such joint action taken as is justified by the evidence.

SECTION 14. AMENDMENT. Section 4-08-15 of the North Dakota Century Code is amended and reenacted as follows:

4-08-15. Tax levy - Appropriation from county general fund - Both authorized. The board of county commissioners of any county of this state in which a levy for county agent extension work has been voted on and approved by the people as provided for in sections 4-08-01 and 4-08-03 may levy not to exceed an amount necessary for such purpose, as provided in section 4-08-09, not exceeding the limitation in subsection 4 of section 57-15-06.7. The statutory mill levy limitation in effect during any biennium, and not the limitation in effect at the time of a county's vote for county agent extension work or the number of mills that may have been stated in the ballot for such a vote, is the applicable limitation. If it determines that the amount derived from the levy will not be sufficient for such purpose the board may appropriate additional funds out of the county general fund to cover the deficiency.

SECTION 15. AMENDMENT. Section 4-08-15.1 of the North Dakota Century Code is amended and reenacted as follows:

4-08-15.1. County agent Extension work - Additional tax levy. The board of county commissioners of any county, upon passage of a resolution, may submit, at the next regularly scheduled or special election in the county, the question of providing for an additional annual levy not exceeding the limitation in subsection 5 of section 57-15-06.7 for county agent extension work. If the question submitted is approved by a majority of the electors voting thereon, the county commissioners board shall proceed to make the levy. The number of mills approved by the electors as an additional annual levy may not be increased by the board of county commissioners without voter approval of such increased levy as set out in this section, even if there is a subsequent increase in the mill levy limitation in subsection 5 of section 57-15-06.7. Upon approval of the levy for the county agent extension work, the board of county commissioners may expend the funds in the manner it deems best adapted to accomplish the purposes set forth by law. The levy may be discontinued upon the passage of a resolution by the board of county commissioners.

SECTION 16. AMENDMENT. Subsections 4 and 5 of section 57-15-06.7 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

4. Counties levying a tax for ~~county agent~~ extension work as provided in section 4-08-15 may levy a tax not exceeding two mills.
5. Counties levying a tax for ~~county agent~~ extension work as provided for in section 4-08-15.1 may levy a tax not exceeding two mills.

SECTION 17. REPEAL. Section 9 of chapter 34 of the 1989 Session Laws is repealed.

Approved March 7, 1997
Filed March 10, 1997

CHAPTER 59

HOUSE BILL NO. 1434

(Representatives Nelson, Warner, Brusegaard, D. Johnson)
(Senators Wanzek, Wogsland)

BAGGED AGRICULTURAL SEED LABELING

AN ACT to create and enact a new section to chapter 4-09 of the North Dakota Century Code, relating to labeling requirements for bagged agricultural seed; and to amend and reenact section 4-09-08 of the North Dakota Century Code, relating to public laboratory services by the state seed commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁴ **SECTION 1. AMENDMENT.** Section 4-09-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-08. Public laboratory service - ~~Free tests~~ - Fees for ~~additional~~ tests.
~~Any resident of this state may send samples of cereals, flax, sunflower, alfalfa, soybean, and edible bean seed to the commissioner for germination tests. No more than three samples per year per person may be examined and reported on free of charge. The commissioner shall accept samples submitted to the state laboratory for testing and shall determine the types of tests to be conducted on the samples. The commissioner, with the approval of the seed commission, shall prescribe the time of year when seed samples will be accepted for free tests, the fees which will apply to samples submitted by any resident of the state in excess of three, and the fees which will be charged establish and charge fees for all other laboratory tests and services.~~

SECTION 2. A new section to chapter 4-09 of the North Dakota Century Code is created and enacted as follows:

Labeling requirements for bagged agricultural seed.

1. Labelers of bagged agricultural seed labeled and sold exclusively within this state, with the approval of the commissioner, may provide instead of a label or tag printed upon or attached to the bag an affidavit of analysis. The seller shall retain a copy of the affidavit.
2. The affidavit must:
 - a. Include all the labeling requirements as provided in section 4-09-10.
 - b. Be properly delivered with each sale or movement of the seed.
 - c. Contain the date of sale, the name and address of the labeler, the name and address of the seller, if different than the labeler, the name and address of the buyer, and the quantity sold.

⁴ Section 4-09-08 was also amended by section 1 of House Bill No. 1339, chapter 63.

3. Each bag must have the following information stamped on or otherwise attached to the bag:
 - a. For seeds of wheat, durum, barley, oats, rye, soybeans, edible beans, and flax, the commonly accepted name of the kind and variety of each agricultural seed component.
 - b. For seeds other than those listed in subdivision a, the commonly accepted name of the kind or the kind and variety of each agricultural seed component.
 - c. The lot number or other lot identification.
 - d. The name and address of the labeler or packager.
 - e. For seeds of all certified classes, an official certification tag properly attached to or printed on each bag.

Approved March 23, 1997
Filed March 24, 1997

CHAPTER 60

HOUSE BILL NO. 1436

(Representatives Nicholas, Axtman, Gorder)
(Senators Nething, Tallackson, Wanzek)

SEED POTATO STANDARDS

AN ACT to create and enact two new sections to chapter 4-10 of the North Dakota Century Code, relating to quality standards and planting records for seed potatoes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new sections to chapter 4-10 of the North Dakota Century Code are created and enacted as follows:

Seed potatoes - Certification requirement. A person may not plant seed potatoes in lots of one acre [.405 hectare] or more, for the purpose of selling the crop to be harvested, unless the seed potatoes have been certified by the commissioner as meeting the standards of this chapter, have been certified by another state or province having a similar seed potato quality assurance program, or have been field-inspected and approved by the commissioner. However, the commissioner shall permit North Dakota growers to plant uncertified potatoes grown by them, if the growers are within twelve months of having their own certified parent seed potatoes. If the commissioner has reason to believe that seed potatoes meeting the requirements of this section are not available in sufficient quantities to fulfill planting needs, the commissioner may permit the planting of seed potatoes with a higher disease content, provided that bacterial ring rot is not present and that a serious disease threat is not posed.

Records. Every person who plants potatoes on more than one acre [.405 hectare] shall maintain records indicating the acreage [hectarage], varieties, and source of all seed potatoes planted. The records must be available for inspection by the commissioner for a period of two years.

Approved March 23, 1997
Filed March 24, 1997

CHAPTER 61

HOUSE BILL NO. 1437

(Representatives Nicholas, Axtman, Gorder)
(Senators Nething, Tallackson, Wanzek)

SEED POTATO CERTIFICATION

AN ACT to create and enact three new sections to chapter 4-10 of the North Dakota Century Code, relating to quality standards for seed potatoes imported into the state and potato planting records; to amend and reenact section 4-10-22 of the North Dakota Century Code, relating to civil penalties for violating potato grading and inspection laws; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Three new sections to chapter 4-10 of the North Dakota Century Code are created and enacted as follows:

Imported seed potatoes - Certification requirement. All seed potatoes imported into this state for planting purposes by any person from any state, territory, or country must be accompanied by an official grade certificate describing the grade of the potatoes or a health certificate to certify that the lot of seed potatoes was field inspected by an official certifying agency and is similar to the standards established by this chapter for seed potatoes.

Exported seed potatoes - Certification requirement. All seed potatoes exported from this state must be accompanied by an official grade certificate describing the grade of the potatoes or a health certificate to certify that the lot of seed potatoes was field inspected by the state seed department.

Records. Every person who plants imported seed potatoes on more than one acre [.405 hectare] of land shall maintain records indicating the acreage [hectare], varieties, and sources of all seed potatoes planted. The records must be available for inspection by the commissioner for a period of two years.

SECTION 2. AMENDMENT. Section 4-10-22 of the North Dakota Century Code is amended and reenacted as follows:

4-10-22. Penalties for violation of chapter.

1. Any person who violates any of the provisions of this chapter is guilty of a class A misdemeanor.
2. Any person who violates any of the provisions of this chapter is subject to a civil penalty not to exceed ~~one~~ five thousand dollars for each violation. Such civil penalty may be adjudicated by the courts or by the state seed department through an administrative hearing pursuant to chapter 28-32.

3. The department may, in accordance with the laws of this state governing injunctions and other process, maintain an action in the name of the state against any person violating any provision of this chapter.

Approved March 23, 1997
Filed March 24, 1997

CHAPTER 62

HOUSE BILL NO. 1199

(Representatives Nicholas, Gerntholz)
(Senators Andrist, Robinson)

OILSEED ASSESSMENTS

AN ACT to amend and reenact sections 4-10.2-03, 4-10.2-05, and 4-10.2-08 of the North Dakota Century Code, relating to the North Dakota oilseed council, its members, member compensation, and commodity assessments; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-10.2-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-10.2-03. North Dakota oilseed council - Membership - Election - Term. ~~There is hereby established a~~ The North Dakota oilseed council: ~~The council~~ is composed of one participating sunflower grower elected from each of the districts established in section 4-10.2-04, one participating safflower grower appointed by the governor, one participating crambe grower appointed by the governor, one participating rapeseed or canola grower appointed by the governor, one participating flax grower appointed by the governor, and one member appointed by the director of the agricultural experiment station. The chairman of the council must be a member of the council elected by a majority vote of the council. The commissioner is an ex officio member of the council. Every elected and appointed council member must be a citizen of the state. Every elected member must be a bona fide resident of and participating sunflower grower in the district the member represents. The term of each elected member is three years and begins on April first of the year of election, except that initially two members must be elected for a three-year term; two members must be elected for a two-year term; and two members must be elected for a one-year term as designated by the commissioner. The term of the representative for district seven must coincide with the term of the representative for district six. The term of each appointed member is three years and begins on April first of the year of the appointment, except that initially the flax grower member must be appointed for a three-year term, the member designated by the director of the ~~agriculture~~ agricultural experiment station and the safflower grower member must be appointed for a two-year term, and the rapeseed or canola grower must be appointed for a one-year term. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the remaining members of the council shall appoint another qualified participating grower for the remainder of the term of the office vacated. The commissioner, or a county agent designated by the commissioner, in cooperation with the North Dakota state university extension service, shall conduct all elections under this section in each district in the manner the commissioner deems fair and reasonable. All elections must be conducted ~~within seventy-five days prior to~~ before April first of each year. No elected or appointed member of the council is eligible to serve more than three consecutive three-year terms.

⁵ **SECTION 2. AMENDMENT.** Section 4-10.2-05 of the North Dakota Century Code is amended and reenacted as follows:

4-10.2-05. Meetings - Quorum - Compensation and expenses of council. A majority of the voting members of the council constitutes a quorum for the transaction of all business in carrying out the duties of the council. All meetings of the council must be called by the chairman except special meetings which must be called by the chairman on the petition of two council members within seven days of receiving such a petition. Each member of the council; ~~except the commissioner of agriculture, shall receive the sum of twenty-five dollars per day for each day spent in performance of the business of the council and must be reimbursed for expenses incurred in the performance of official duties in the amounts provided by law for state officials~~ is entitled to receive the same per diem compensation as provided for members of the legislative council under section 54-35-10, and to reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the council. No compensation may be paid under this section to any member who receives compensation or salary as a regular state employee or official.

SECTION 3. AMENDMENT. Section 4-10.2-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-10.2-08. Assessments levied - Continuing appropriation. An assessment at the rate of ~~two~~ three cents per hundredweight [45.36 kilograms] must be levied and imposed upon all sunflower, safflower, rapeseed or canola, and crambe grown in the state or sold to a first purchaser, and an assessment at the rate of two cents per bushel [35.24 liters] must be levied and imposed upon all flax grown in the state or sold to a first purchaser. This assessment is due upon any identifiable lot or quantity of sunflower, safflower, rapeseed or canola, crambe, or flax.

A first purchaser of sunflower, safflower, rapeseed or canola, crambe, or flax shall file an application with the council on forms prescribed and furnished by the council which must contain the name under which the first purchaser is transacting business within the state, the place or places of business, the location of loading and shipping places of agents of the first purchaser, the names and addresses of the several persons constituting the firm partnership, if a corporation, the corporate name and the names and addresses of its principal officers and agents within the state, and, if a limited liability company, the limited liability company name and the names and addresses of its principal managers and agents within this state. The council shall issue a certificate to the first purchaser. A first purchaser may not sell, process, or ship any sunflower, safflower, rapeseed or canola, crambe, or flax until it has secured a certificate as required by this section.

The first purchaser of sunflower, safflower, rapeseed or canola, crambe, or flax shall collect the assessment imposed by this section by charging and collecting from the seller the assessment at the rate specified in this section by deducting the assessment from the purchase price of all sunflower, safflower, rapeseed or canola, crambe, or flax subject to the assessment and purchased by the first purchaser.

⁵ Section 4-10.2-05 was also amended by section 2 of Senate Bill No. 2052, chapter 432.

Every first purchaser shall keep as a part of its permanent records a record of all purchases, sales, and shipments of raw sunflower, safflower, rapeseed or canola, crambe, or flax, which may be examined by the council at all reasonable times. Every first purchaser shall report to the council stating the quantity of sunflower, safflower, rapeseed or canola, crambe, or flax received, sold, or shipped by it. The report must be made at the times and in the manner prescribed by the council. The remittance of the assessment as provided in this section must accompany the report. All moneys levied and collected under this chapter must be paid to the council for deposit in the state treasury to the credit of a special revolving account or accounts designated "oilseed fund". All money in the oilseed fund is appropriated on a continuing basis to the council to be used exclusively to carry out the intent and purposes of this chapter. Assessments collected from each crop must be used, for the purposes of this chapter, on each respective crop. However, for flax, emphasis should be given to utilize the assessment, except for that portion of the assessment necessary to administer the flax assessment, for nutritional and therapeutic research. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 3, 1997
Filed April 3, 1997

CHAPTER 63

HOUSE BILL NO. 1339

(Representatives Lloyd, Aarsvold)
(Senators G. Nelson, Wogsland)

DRY BEAN ASSESSMENTS

AN ACT to amend and reenact sections 4-09-08, 4-09-10, 4-09-14.3, 4-10.3-01, 4-10.3-02, 4-10.3-03, 4-10.3-04, 4-10.3-05, 4-10.3-08, 4-10.3-09, 4-24-09, and 4-24-10 of the North Dakota Century Code, relating to the North Dakota dry bean council and the assessment on dry beans; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁶ **SECTION 1. AMENDMENT.** Section 4-09-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-08. Public laboratory service - Free tests - Fees for additional tests. Any resident of this state may send samples of cereals, flax, sunflower, alfalfa, soybean, and ~~edible~~ dry bean seed to the commissioner for germination tests. No more than three samples per year per person may be examined and reported on free of charge. The commissioner, with the approval of the seed commission, shall prescribe the time of year when seed samples will be accepted for free tests, the fees which will apply to samples submitted by any resident of the state in excess of three, and the fees which will be charged for all other laboratory tests and services.

SECTION 2. AMENDMENT. Section 4-09-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-10. Labeling requirements for agricultural seed. Each container of agricultural seed which is sold, offered for sale, exposed for sale, transported for sale, or held in storage with the intent to sell for planting purposes within this state must bear thereon or have attached thereto in a conspicuous place, or there must be properly delivered with bulk sales or movements of said seed, a plainly written or printed label or tag in the English language giving the following information, which statement may not be modified or denied in the labeling or on another label attached to the container:

1. a. In seeds of wheat, durum, barley, oats, rye, soybeans, ~~edible~~ dry beans, and flax the commonly accepted name of the kind and variety of each agricultural seed component in excess of five percent of the whole and the percentage by weight of each. Variety identification is not required for seeds labeled "for vegetative cover only".

⁶ Section 4-09-08 was also amended by section 1 of House Bill No. 1434, chapter 59.

- b. In all other seeds not named in subdivision a the commonly accepted name of the kind or the kind and variety of each agricultural seed component in excess of five percent of the whole and the percentage of weight of each.
 - c. When more than ten percent of the whole consists of an aggregate of agricultural seed components, each present in an amount not exceeding five percent of the whole, each component in excess of one percent of the whole must be named together with the percentage by weight of each. All components must be listed in the order of their predominance. Where more than one component is named, the word "mixture", or the word "mixed", must be shown conspicuously on the label.
 2. Lot number or other lot identification.
 3. Origin, state or foreign country where grown. If the origin is unknown, that fact must be stated.
 4. Percentage by weight of all weed seeds.
 5. The name and rate of occurrence per pound [453.59 grams] of each kind of restricted noxious weed seeds present, if the restricted noxious weed seeds are present singly or collectively in amounts:
 - a. In seeds of grasses and small seeded legumes, in excess of thirteen seeds per pound [453.59 grams]; and
 - b. In other agricultural seeds including the cereals, oil seed crops, millets, and seeds of similar size, in excess of five seeds per pound [453.59 grams].
 6. Percentage by weight of agricultural seed which may be designated as crop seed, other than those required to be named on the label.
 7. Percentage by weight of inert matter.
 8. For each agricultural seed:
 - a. Percentage of germination, exclusive of hard seed. Total germination and hard seed may be stated as such, if desired.
 - b. Percentage of hard seed, if present. Total germination and hard seed may be stated as such, if desired.
 - c. The calendar month and year the test was completed to determine such percentages.
 9. The full name and address of the person who labeled said seed, or who sells, offers for sale or exposes said seed for sale within this state.
 10. For treated seeds as defined in this chapter, for which a separate label may be used:
 - a. A word or statement indicating that the seed has been treated;

- b. The commonly accepted, coined, chemical or abbreviated chemical (generic) name of the applied seed protectant pesticide; and
 - c. If the substance in the amount present with the seed is harmful to human or other vertebrate animals, a caution statement such as "Do not use for food or feed or oil purposes". The caution for mercurials and similar toxic substances must be a poison statement or symbol.
11. That the seed container itself is a hermetically sealed container as defined by rules adopted by the commissioner.
 12. A disease test result for seedborne diseases. For the purpose of this subsection, the words "disease test result" have the meaning ascribed to them by rules adopted by the commissioner.

SECTION 3. AMENDMENT. Section 4-09-14.3 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-14.3. Fees. The fees required by section 4-09-14.1 shall be pursuant to the following fee schedule:

1. A container containing:

100 to 160 lbs. of seed	eight cents
60 to 99 lbs. of seed	seven cents
30 to 59 lbs. of seed	six cents
15 to 29 lbs. of seed	five cents
1/2 to 14 lbs. of seed	four cents
2. Cereal grains, per 100 pounds [45.36 kilograms], two cents. Flax, soybeans, ~~edible~~ dry beans, per 100 pounds [45.36 kilograms], four cents.
3. Seeds sold in bulk, and not specified in subsection 2, per 100 pounds, [45.36 kilograms], six cents.
4. Whenever seed is sold at wholesale or on consignment or commission in packets of eight ounces [226.80 grams] or less, the fee shall be fifty cents per twenty-five dollars of wholesale value, or fraction thereof, of the packets in the lot container.

SECTION 4. AMENDMENT. Section 4-10.3-01 of the North Dakota Century Code is amended and reenacted as follows:

4-10.3-01. Legislative policy. ~~It is hereby declared that the~~ The production, development, marketing, and promotion of ~~edible~~ dry beans in ~~North Dakota this state~~ this state is important to the general welfare of the people of North Dakota; ~~that it.~~ It is in the public interest that better methods of production, processing, and marketing of ~~edible~~ dry beans and that advertising and promoting of ~~edible~~ dry beans grown in ~~North Dakota this state~~ this state be fostered, encouraged, developed, and improved so the ~~edible~~ dry bean industry within the state, the people directly or indirectly employed by said industry and the people of North Dakota should be benefited thereby, the accomplishment of which requires and demands the establishment of a North Dakota ~~edible~~ dry bean council for the purposes and with the objectives of contributing to the stabilization and improvement of the agricultural economy of this

state. This chapter ~~must~~ does not be construed to abrogate or limit in any way the rights, powers, duties, and functions of the office of the commissioner of agriculture or any other agency of the state, but is supplementary thereto and in aid and cooperation therewith; ~~nor may this.~~ This chapter be construed to does not authorize the North Dakota ~~edible~~ dry bean council to engage in competitive business enterprises, it being the intended purpose of this chapter that the council, through research and advertising, shall promote North Dakota-grown ~~edible~~ dry beans.

SECTION 5. AMENDMENT. Section 4-10.3-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-10.3-02. Definitions. Whenever used in this chapter:

1. "Commissioner" means commissioner of agriculture or the commissioner's designated representative.
2. "Council" means the North Dakota ~~edible~~ dry bean council.
3. "Designated handler" means any person who initially places ~~edible~~ dry beans, whether as an owner, agent, or otherwise, into the channels of trade and commerce, or any person who is engaged in the processing of beans into food for human consumption in any form. A grower selling the grower's unharvested ~~edible~~ dry beans, or delivering the grower's ~~edible~~ dry beans from the farm on which they are produced to storage facilities, packing sheds, or processing plants within the state is not considered to be a designated handler. For the purposes of assessments and reporting, "designated handler", includes a grower selling the grower's unharvested ~~edible~~ dry beans out of state, or delivering the grower's ~~edible~~ dry beans from the farm where they were produced to any storage facilities, packing sheds, or processing plants located outside the state.
4. "~~Edible~~ Dry beans" means any and all varieties of ~~edible~~ dry beans, excluding soybeans, harvested within the state.
5. "Grower" means any person who plants, raises, and harvests ~~edible~~ dry beans from more than ten acres [4.05 hectares].
6. "Hundredweight" means a one hundred pound unit [45.36 kilograms] or a combination of packages making a one hundred pound unit [45.36 kilograms] or any shipment of ~~edible~~ dry beans based on invoices or bills of lading records.
7. "Participating grower" means a grower who has not exempted himself from the payment of taxes on ~~edible~~ dry bean production under this chapter for a particular year, or a grower who is not exempt from the payment of taxes on ~~edible~~ dry bean production under this chapter.
8. "Person" means an individual, partnership, corporation, limited liability company, association, grower, cooperative, or any other business unit.
9. "Processor" means a person who is actively engaged in the processing of ~~edible~~ dry beans for human consumption.

SECTION 6. AMENDMENT. Section 4-10.3-03 of the North Dakota Century Code is amended and reenacted as follows:

4-10.3-03. North Dakota state ~~edible~~ dry bean council - Membership - Election - Term. ~~There is hereby established a~~ The North Dakota ~~edible~~ dry bean council. ~~The council~~ is composed of one participating grower elected from each of the districts established in section 4-10.3-04. The chairman of the council must be a member of the council elected by a majority vote of the council. The commissioner of agriculture is an ex officio member of the council. Every elected council member must be a citizen of the state and a bona fide resident of and participating grower in the district the member represents. The term of each elected member is three years and begins on April first of the year of election, except that initially one member must be elected for a three-year term; two members must be elected for two-year terms; and two members must be elected for one-year terms as designated by the commissioner. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the council shall, by majority vote, appoint another qualified participating grower for the remainder of the term of the office vacated. The commissioner, or a county agent designated by the commissioner, in cooperation with the cooperative extension service, shall conduct all elections under this section in each district in the manner the commissioner deems fair and reasonable. ~~The first election~~ Elections must be held ~~within forty-five days after April 20, 1977, and all elections thereafter must be conducted within seventy-five days prior to~~ before April first of each year. No elected member of the council is eligible to serve more than two consecutive three-year terms.

SECTION 7. AMENDMENT. Section 4-10.3-04 of the North Dakota Century Code is amended and reenacted as follows:

4-10.3-04. ~~Edible~~ Dry bean districts - Establishment. The following ~~edible~~ dry bean districts are established for the purpose of dividing the state into districts containing as nearly equal ~~edible~~ dry bean acreages as practicable:

1. District one consists of the counties of Benson, Bottineau, Burke, Cavalier, Divide, McHenry, Mountrail, Pembina, Pierce, Ramsey, Renville, Rolette, Towner, Walsh, Ward, and Williams.
2. District two consists of Grand Forks County.
3. District three consists of the counties of Barnes, Billings, Burleigh, Dunn, Eddy, Foster, Golden Valley, Griggs, Kidder, McKenzie, McLean, Mercer, Nelson, Oliver, Sheridan, Steele, Stutsman, and Wells.
4. District four consists of Traill County.
5. District five consists of the counties of Adams, Bowman, Cass, Dickey, Emmons, Grant, Hettinger, LaMoure, Logan, McIntosh, Morton, Ransom, Richland, Sargent, Sioux, Slope, and Stark.

⁷ **SECTION 8. AMENDMENT.** Section 4-10.3-05 of the North Dakota Century Code is amended and reenacted as follows:

4-10.3-05. Meetings - Quorum - Compensation and expenses of council. A majority of the voting members of the council constitutes a quorum for the transaction of all business in carrying out the duties of the council. ~~All The chairman shall call meetings of the council must be called by the chairman except. The chairman shall call all special meetings which must be called by the chairman~~ on the petition of three council members within seven days of receiving ~~such a the~~ petition. Each member of the council; ~~except the commissioner of agriculture; shall receive the sum of twenty five dollars per day for each day spent in performance of the business of the council and must be reimbursed for expenses incurred in the performance of official duties in the amounts provided by law for state officials is entitled to receive the same per diem compensation as provided for members of the legislative council under section 54-35-10, and reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the council. No compensation may be paid under this section to any member who receives compensation or salary as a regular state employee or official.~~

SECTION 9. AMENDMENT. Section 4-10.3-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-10.3-08. Tax levies - Collection - Reports - Continuing appropriation. Effective July 1, 1977, an

1. An assessment at the rate of ~~five~~ ten cents per hundredweight [45.36 kilograms] must be levied and imposed upon all ~~edible dry~~ beans grown in ~~the this~~ state, delivered into this state, or sold to a designated handler. This assessment is due upon any identifiable lot or quantity of ~~edible dry~~ beans.
2. A designated handler of ~~edible dry~~ beans shall file an application with the council on forms prescribed and furnished by the council which must contain the name under which the handler is transacting business within the state, the place or places of business, the location of loading and shipping places of agents of the first designated handler, the names and addresses of the several persons constituting the firm partnership, if a corporation, the corporate name and the names and addresses of its principal officers and agents within the state, and, if a limited liability company, the limited liability company name and the names and addresses of its principal managers and agents within this state.
3. The council shall issue a certificate to the designated handler. A designated handler may not sell, process, or ship any ~~edible dry~~ beans until it has furnished a certificate as required by this section.
4. The first designated handler in North Dakota of ~~edible dry~~ beans shall collect the assessment imposed by this section by charging and collecting from the seller the assessment at the rate of ~~five~~ ten cents per hundredweight [45.36 kilograms] by deducting the assessment from the

⁷ Section 4-10.3-05 was also amended by section 3 of Senate Bill No. 2052, chapter 432.

purchase price of all ~~edible~~ dry beans subject to the assessment and purchased by the designated handler.

5. Every designated handler shall keep as a part of its permanent records a record of all purchases, sales, and shipments of raw ~~edible~~ dry beans, which may be examined by the council at all reasonable times. Every designated handler shall report to the council stating the quantity in individual and total amounts of ~~edible~~ dry beans received, sold, or shipped by it. The report must state from whom each individual amount was received. The report must be made at the times and in the manner prescribed by the council. The remittance of the assessment as provided in this section must accompany the report. All moneys levied and collected under this chapter must be paid to the council for deposit in the state treasury to the credit of a special revolving account ~~or accounts~~ designated "~~edible~~ the dry bean fund". All money in the ~~edible~~ dry bean fund is appropriated on a continuing basis to the council to be used exclusively to carry out the intent and purposes of this chapter. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner of agriculture.

SECTION 10. AMENDMENT. Section 4-10.3-09 of the North Dakota Century Code is amended and reenacted as follows:

4-10.3-09. Nonparticipating growers - Refunds. Any grower subject to the assessment provided in this chapter may, within sixty days following such assessment or final settlement, make application by personal letter to the ~~edible~~ dry bean council for a refund application blank. Upon the return of ~~said~~ the blank, properly executed by the grower, accompanied by a record of the assessment by the designated handler, the grower must be refunded the net amount of the assessment collected. If no request for refund has been made within the period prescribed above then the grower is presumed to have agreed to such assessment. However, a grower, for any reason, having paid the tax more than once on the same ~~edible~~ dry beans, upon furnishing proof of this to the council, is entitled to a refund of the overpayment. The council, to inform the grower, shall develop and disseminate information and instructions relating to the purpose of the ~~edible~~ dry bean tax and manner in which refunds may be claimed, and to this extent shall cooperate with governmental agencies, state and federal, and private businesses engaged in the purchase of ~~edible~~ dry beans.

SECTION 11. AMENDMENT. Section 4-24-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-24-09. Agricultural commodity assessments funds - Investment income allocation. The state treasurer, notwithstanding any other provision of law to the contrary, shall invest in accordance with section 21-10-07 all available moneys in the spud fund, oilseed fund, ~~edible~~ dry bean fund, barley fund, soybean fund, corn fund, honey fund, turkey fund, milk stabilization fund, dairy promotion commission fund, state wheat commission fund, and the beef commission fund. The investment of moneys must be made in cooperation with the governing body of the respective agricultural commodity entity. The state treasurer, by rule, shall establish, in cooperation with the agricultural commodity organizations, guidelines to be followed regarding the investment of moneys in each fund. The state treasurer shall credit twenty percent of the investment income derived from each fund to the general fund in the state treasury as payment for accounting, printing, data processing, legal, and other services when provided without cost by the state to the agricultural commodity

entity. The state treasurer shall credit eighty percent of the investment income derived from each fund to the respective fund.

SECTION 12. AMENDMENT. Section 4-24-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-24-10. Agricultural commodity promotion groups to report to legislative assembly - Report contents. Between the first and tenth legislative day of each regular legislative session, the North Dakota potato council, the North Dakota oilseed council, the North Dakota ~~edible~~ dry bean council, the North Dakota barley council, the North Dakota soybean council, the North Dakota corn utilization council, the North Dakota beekeepers association, the North Dakota turkey federation, the North Dakota milk stabilization board, the North Dakota dairy promotion commission, the North Dakota state wheat commission, and the North Dakota beef commission must file a uniform report at a public hearing before the standing agriculture committee of each house of the legislative assembly. The presiding officer of each house of the legislative assembly may direct that the reports be filed with some other standing committee of that house. Each report must contain a summary of the activities of the commodity group during the current biennium, a single-page uniform statement of revenues and expenditures for the next biennium. Each report, except the reports of the North Dakota beekeepers association and the North Dakota turkey federation, must also include a state auditor's report on the commodity group's single-page uniform statement of revenues and expenditures for the previous two fiscal years.

SECTION 13. EFFECTIVE DATE. This Act becomes effective on July 1, 1997.

SECTION 14. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 3, 1997
Filed April 3, 1997

CHAPTER 64

HOUSE BILL NO. 1185

(Representatives Rennerfeldt, Monson, Aarsvold)
(Senators Kinnoin, Urlacher, Thane)

BARLEY ASSESSMENTS

AN ACT to amend and reenact sections 4-10.4-03, 4-10.4-08, and 4-10.4-12 of the North Dakota Century Code, relating to the state barley council and the tax assessment on barley production.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-10.4-03 of the North Dakota Century Code is amended and reenacted as follows:

4-10.4-03. Council - Membership - Election - Term. The council is composed of one participating grower elected from each of the districts established in section 4-10.4-04. The chairman of the council must be an elected member of the council elected by a majority vote of the council. The commissioner is an ex officio member of the council and does not have a vote. Every elected council member must be a citizen of the state and a bona fide resident of and participating grower in the district the member represents. The term of each elected member is three years and begins on April first of the year of election, except that initially two members must be elected for a three-year term; two members must be elected for a two-year term; and one member must be elected for a one-year term as designated by the commissioner. Notwithstanding the terms provided for members elected before August 1, 1997, the board, before December 31, 1997, shall determine by lot the order of subsequent elections for its members so that two members are elected for a four-year term during 1998, and one member is elected for a four-year term during each of the subsequent three years. The term of each member elected after July 31, 1997, is four years and begins on April first of the year of election. If at any time during a member's term a member ceases to possess any of the qualifications provided for in this chapter, the member's office is vacant and the remaining members of the council shall appoint another qualified participating grower for the remainder of the term of the office vacated. The commissioner, or a county agent designated by the commissioner, in cooperation with the cooperative extension service, shall conduct all elections under this section in each district in the manner the commissioner deems fair and reasonable. All such elections must be completed at least sixty days prior to expiration of the members' terms. No ~~elected~~ member ~~of serving on~~ the council before August 1, 1997, is eligible to serve more than two consecutive ~~three-year~~ four-year terms. No member elected to the council after July 31, 1997, is eligible to serve more than three consecutive four-year terms.

SECTION 2. AMENDMENT. Section 4-10.4-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-10.4-08. Tax levied.

1. A tax at the rate of ~~five~~ ten mills per bushel [35.24 liters] must be levied and imposed upon all barley grown in the state, delivered into the state, or sold to a first purchaser in the state. This tax is due upon any identifiable lot or quantity of barley.

2. Every first purchaser of barley shall collect the tax imposed by this section by charging and collecting from the seller the tax at the rate of ~~five~~ ten mills per bushel [35.24 liters] by deducting the tax from the purchase price of all barley subject to the tax and purchased by the first purchaser.
3. Every first purchaser shall keep as a part of its permanent records a record of all purchases, sales, and shipments of barley, which may be examined by the council at all reasonable times. Every first purchaser shall report to the council by the ~~twentieth~~ thirtieth day of each calendar quarter stating the quantity of barley received, sold, or shipped by it; ~~except that if less than twenty five thousand bushels [880.98 cubic meters] have been purchased, in any calendar quarter, the tax may be reported and remitted with the following quarter's return, provided that all taxes collected must be remitted at least annually.~~ The remittance of the tax as provided in this section must accompany the report. All moneys levied and collected under this chapter must be paid to the council for deposit in the state treasury to the credit of an account or accounts designated "barley fund" to be used exclusively to carry out the intent and purposes of this chapter. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner.
4. The tax provided for by this section must be deducted as provided by this chapter whether the barley is stored or sold in this or any other state, but if agreements have not been made with dealers and first purchasers outside of the state for collecting the tax, the grower shall remit the tax to the council on all barley sold by the grower outside the state.

SECTION 3. AMENDMENT. Section 4-10.4-12 of the North Dakota Century Code is amended and reenacted as follows:

4-10.4-12. Penalty for nonpayment of tax. Any first purchaser who fails to pay any tax levied by this chapter on the date the tax becomes due is delinquent ~~and the~~. The council ~~shall~~ may levy a penalty on the delinquent payments of ten percent of the tax due, plus interest at the rate of six percent per annum from the due date. The council shall collect ~~the~~ any penalty and interest in the manner prescribed by section 4-10.4-11.

Approved April 1, 1997
Filed April 2, 1997

CHAPTER 65**HOUSE BILL NO. 1328**

(Representatives Aarsvold, Lloyd, Nicholas)

SOYBEAN ASSESSMENT REFUNDS

AN ACT to repeal section 4-10.5-08 of the North Dakota Century Code, relating to soybean assessment refunds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 4-10.5-08 of the 1995 Supplement to the North Dakota Century Code is repealed.

Approved March 13, 1997
Filed March 13, 1997

CHAPTER 66

SENATE BILL NO. 2124

(Senator Andrist)

DRY PEA AND LENTIL COUNCIL

AN ACT to provide for the creation of the dry pea and lentil council; to provide a penalty; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. In this Act, unless the context otherwise requires:

1. "Commissioner" means the commissioner of agriculture or the commissioner's designee.
2. "Council" means the North Dakota dry pea and lentil council.
3. "Dry peas and lentils" means the range of pulse crops including lentils, dry peas, chickpeas, and lupins.
4. "First purchaser" means any person, firm, corporation, association, partnership, agent, or broker buying, accepting for sale, or otherwise acquiring dry peas and lentils after harvest from a grower. The term includes a mortgagee, pledgee, lienor, or other claimant having a claim against the producer, when the actual or constructive possession of lentils and dry peas is taken as part of payment of or in satisfaction of the mortgage, pledge, lien, or claim.
5. "Grower" means any person who plants, raises, or harvests dry peas and lentils, and includes both the owner and the tenant jointly, a person, partnership, association, corporation, limited liability company, cooperative, trust, sharecropper, and any other, and all business units, devices, and arrangements.
6. "Participating grower" means a grower who has not claimed any refunds for the payment of taxes on dry peas and lentils produced under this Act for the previous or current year.

SECTION 2. Dry pea and lentil council - Membership - Term. There is a North Dakota dry pea and lentil council. The council is composed of one participating grower elected from each of the districts established in section 4 of this Act. The chairman of the council must be a member of the council elected by a majority vote of the council. The commissioner of agriculture is an ex officio member of the council. Every elected member of the council must be a citizen of the state and a bona fide resident of and participating grower in the district the member represents. The term of each elected member is three years and begins on April first of the year of election, except that initially one member must be elected for a three-year term; two members must be elected for two-year terms; and two members must be elected for one-year terms as designated by the commissioner. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this Act, the member's office is deemed vacant and the council, by majority vote, shall appoint another qualified grower from the affected district for

the remainder of the term of the office vacated. No elected member of the council is eligible to serve more than three consecutive three-year terms.

SECTION 3. Dry pea and lentil council - Election. The commissioner, or a county agent designated by the commissioner, in cooperation with the cooperative extension service shall conduct all elections under this section in each district in the manner the commissioner deems fair and reasonable. The first election must be held within forty-five days after the effective date of this Act, and all elections thereafter must be conducted prior to April first. Prospective candidates for the council must have planted dry peas or lentils in the previous year or intend to plant dry peas or lentils in the coming year. County election meetings are to be announced in the official newspaper of the county not less than five days nor more than thirteen days prior to the meeting. Any current or prospective participating dry pea and lentil grower is eligible to vote. Elected county representatives shall then meet in district caucus to elect one person from that group to act as the district representative.

SECTION 4. Dry pea and lentil districts - Establishment. The following dry pea and lentil districts are established for the purpose of dividing the state into districts containing as nearly equal dry pea and lentil acreage as practicable:

1. District one consists of the counties of Burke, Divide, McKenzie, Mountrail, and Williams.
2. District two consists of the counties of Adams, Billings, Bowman, Dunn, Golden Valley, Grant, Hettinger, Mercer, Morton, Oliver, Sioux, and Slope.
3. District three consists of the counties of Benson, Bottineau, McHenry, Pierce, Renville, Rolette, Towner, and Ward.
4. District four consists of the counties of Burleigh, Emmons, Kidder, Logan, McIntosh, McLean, Sheridan, and Wells.
5. District five consists of all remaining North Dakota counties where dry peas and lentils are grown.

⁸ **SECTION 5. Meetings - Quorum - Compensation of council members.** A majority of the voting members of the council constitute a quorum for the transaction of all business in carrying out the duties of the council. All meetings of the council must be called by the chairman except special meetings which must be called by the chairman on the petition of three council members within seven days of receiving the petition. Each member of the council is entitled to receive the same per diem compensation as provided for members of the legislative council under section 54-35-10, and reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the council, except that no compensation under this section may be paid to any member who receives compensation or salary as a regular state employee or official.

⁸ Section 4-10.7-05 was amended by section 9 of Senate Bill No. 2052, chapter 432.

SECTION 6. Expenditure of funds. The council or its designated agent shall maintain an account of all receipts as authorized by this Act. Expenditures of funds made pursuant to this Act must be recorded on itemized vouchers and records maintained in accordance with standards adopted by the state auditor. The accounts and records of the council are open to inspection by the designated state auditors without notice.

SECTION 7. Council powers and duties. In the administration of this Act, the council may:

1. Contract and cooperate with any person or with any governmental department or agency for research, education, publicity, promotion, and transportation for purposes of this Act.
2. Expend funds collected pursuant to this Act for its administration.
3. Appoint, employ, bond, discharge, fix the compensation for, and prescribe the duties of such administrative, clerical, technical, and other personnel as it deems necessary.
4. Accept donations of funds, property, services, or other assistance from public or private sources for the purpose of furthering the objectives of the council.
5. Investigate and prosecute in the name of the state any action or suit to enforce the collection or ensure payment of the taxes authorized by this Act, and to sue and be sued in the name of the council.
6. Formulate the general policies and programs of markets and industries for the utilization of dry peas and lentils grown within the state.

SECTION 8. Certification of first purchasers. A first purchaser of dry peas and lentils shall file an application with the council on forms prescribed and furnished by the council. The forms must contain the name under which the first purchaser is transacting business within the state, the first purchaser's places of business, the location of loading and shipping places of agents of the first purchaser, the names and addresses of the several persons constituting the firm partnership, and if a corporation, the corporate name and the names and addresses of its principal officers and agents within the state. The council shall issue a certificate to the first purchaser. A first purchaser may not sell, process, or ship any dry peas or lentils until the first purchaser has furnished a certificate as required by this section.

SECTION 9. Assessment. Effective on the effective date of this Act, an assessment at the rate of one percent of the net value of dry peas and lentils must be levied and imposed upon all dry peas and lentils grown in the state or sold to a first purchaser. This assessment is due upon any identifiable lot or quantity of dry peas or lentils.

SECTION 10. Collection of assessment. Every first purchaser of dry peas or lentils shall collect the assessment from the seller by deducting the assessment from the net purchase price of all dry peas and lentils subject to the assessment and purchased by the first purchaser.

Each first purchaser shall keep as part of the first purchaser's permanent records a record of all purchases, sales, and shipments of dry peas and lentils, which may be examined by the council at any and all reasonable times. Each first

purchaser shall report to the council, in a manner and at a time prescribed by the council, the quantity in individual and total amounts of dry peas and lentils received, sold, or shipped by the first purchaser. The report must state from whom each individual amount was received. The remittance of the assessment as provided in this section must accompany the report. All moneys levied and collected under this Act must be paid within thirty days of the end of each calendar quarter. Regular audits of the council's accounts may be conducted in accordance with chapter 54-10 and submitted to the commissioner.

SECTION 11. Nonparticipating growers - Refunds. Any grower subject to the assessment provided by this Act, within sixty days following the assessment or final settlement, may apply to the council for a refund application. Upon the return of the properly executed refund application and within sixty days of the date it was mailed to the grower, and accompanied by a record of the assessment collected the council shall issue a refund to the grower. If no request for refund is made within sixty days of sale, then the grower is presumed to have agreed to the assessment. However, a grower, having paid the tax more than once on the same dry peas or lentils, is entitled to a refund of the overpayment upon furnishing proof to the council.

The council, to inform the grower, shall develop and disseminate information and instructions relating to the purpose of the dry pea and lentil tax and manner in which refunds may be claimed, and to this extent shall cooperate with governmental agencies and private businesses engaged in the purchase of dry peas and lentils.

SECTION 12. Advisory referendum by growers. Whenever fifteen percent of the participating growers, with not more than fifty percent of the signatory parties from any one district, as disclosed by the records of the council for the preceding year, petition the council, the council shall conduct an advisory referendum among the participating growers of the state to determine whether they wish the legislative assembly to raise or lower the tax imposed by section 9 of this Act. The advisory referendum may be conducted only among participating growers who have paid all taxes assessed pursuant to this Act for the preceding year, and the ballots must be prepared by the council and mailed to each participating grower at least thirty days prior to the last date for filing ballots. In addition, each ballot must be accompanied by a notice to each participating grower:

1. Of the date of the filing of the petition by the growers for the referendum and the number of signatures contained thereon.
2. Of the date and place where the council will open and tabulate the ballots, which may not be less than five days after the last date for filing the ballots.
3. Of the last date upon which ballots may be filed with the council, or postmarked if delivered to the council by mail.
4. That any participating grower may attend the meeting of the council at the time the ballots are opened and the votes tabulated.

If the majority of the participating growers voting upon the question are in favor of the proposed change, the council shall certify the result to the commissioner with the request that the commissioner prepare a bill to implement the change and to submit it to the next legislative assembly.

SECTION 13. Collection of unpaid assessments. If a first purchaser fails to pay the assessment as provided in this Act, the council may enforce collection in any appropriate court within the state.

SECTION 14. Penalty for nonpayment of assessments. A first purchaser who fails to pay any assessment levied by this Act on the date that the assessment becomes due is delinquent and the council may levy a penalty on the delinquent payments of ten percent of the assessment due, plus interest at the rate of twelve percent per annum from the due date. The penalty and interest must be collected in the manner prescribed by this Act.

SECTION 15. Continuing appropriation. All funds received by the council pursuant to this Act are hereby appropriated as a standing and continuing appropriation for the purposes of this Act.

SECTION 16. Records of the council - Inspection. All records of the council, including acreage reports, tax returns, claims of exemption, and any other data, records, or information retained by the council are public information and must be made available within a reasonable amount of time for the inspection of any person for any lawful purpose during regular business hours at the office of the council.

SECTION 17. Penalty. Any person who willfully violates this Act is guilty of a class B misdemeanor.

Approved March 21, 1997
Filed March 21, 1997

CHAPTER 67

HOUSE BILL NO. 1059

(Legislative Council)
(Government Organization Committee)

POULTRY ADVISORY BOARD REPEALED

AN ACT to amend and reenact sections 4-13.2-03 and 19-07-02 of the North Dakota Century Code, relating to the poultry advisory board; and to repeal section 4-13.2-04 of the North Dakota Century Code, relating to the poultry advisory board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-13.2-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-13.2-03. Purposes - Duties. The commissioner of agriculture may ~~promulgate~~ adopt rules and regulations pursuant to chapter 28-32 to effectuate the purposes of this chapter, and the commissioner of agriculture, or the commissioner's designee, shall enforce ~~the provisions of~~ this chapter. ~~It is the duty of the~~ The commissioner of agriculture ~~to~~ shall:

1. Work toward improving poultry breeding and ~~to~~ cooperate with the board of animal health in controlling and eradicating communicable diseases of poultry.
2. Act as the official state agency for North Dakota in cooperation with the bureau of animal industry, United States department of agriculture, for the purpose of furthering the objectives and supervising the state's participation in the national poultry improvement plan.
3. Act as the state agency to cooperate with the United States department of agriculture, to provide federal-state grading service for poultry and poultry products offered for sale at the retail level, to supervise the federal-state poultry grading service, and to enforce regulations at the retail level as to identification by grade of all poultry sold.
4. Promote generally the welfare and improvement of the poultry industry and the marketing of poultry and poultry products within the state through such means and in such manner as may be deemed by the commissioner conducive to such improvement.
5. Enforce the licensing and bonding requirements provided by this chapter.
6. Administer ~~the "Turkey Promotion Act", as provided in~~ chapter 4-13.1, at the advice of the North Dakota turkey federation.
7. ~~Consult with the advisory board as to the selection of the individual who would represent the poultry division in the department of agriculture if a change in personnel should be needed.~~

SECTION 2. AMENDMENT. Section 19-07-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-07-02. Rulemaking power. The commissioner of agriculture, ~~after consultation with the poultry advisory board,~~ may adopt appropriate rules pursuant to chapter 28-32 to establish registration of egg dealers and to establish standards for candling, grading, and inspecting eggs as to size, quality, purity, strength, holding requirements, transportation, labeling, and sanitation. The commissioner of agriculture must be guided in establishing ~~such~~ the standards by United States department of agriculture regulations governing the grading and inspecting of eggs ~~after consultation with the poultry advisory board.~~ The state department of health may adopt appropriate rules pursuant to chapter 28-32 to establish standards for proper labeling and temperature during the retail storage and sale of shell eggs.

SECTION 3. REPEAL. Section 4-13.2-04 of the 1995 Supplement to the North Dakota Century Code is repealed.

Approved February 11, 1997

Filed February 11, 1997

CHAPTER 68

SENATE BILL NO. 2172

(Senators Watne, Schobinger)

SOIL CONSERVATION DISTRICT ELECTIONS

AN ACT to amend and reenact sections 4-22-17, 4-22-22, and 4-22-48 of the North Dakota Century Code, relating to the election of soil conservation district supervisors and consolidation of soil conservation districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-22-17 of the North Dakota Century Code is amended and reenacted as follows:

4-22-17. Nominating petitions - Petitions required - Final filing date. Any person running for the office of supervisor shall present to the county auditor of the county in which the district lies a petition giving that person's name; ~~post-office and mailing address;~~ and the title and term of the office, and containing the signatures of not less than twenty-five nor more than three hundred qualified electors of the district. When a district lies in more than one county, the petition must be filed with the county auditor of the county where the candidate resides, and such county auditor shall certify to the county auditors of the other counties in which such district lies the name and mailing address of the candidate filing such petition. At the same time, the county auditor, or auditors in the case of multicounty districts, shall also certify to the secretary of state the name and mailing address of each person filing a nominating petition according to this section. No person may participate directly or indirectly in the nomination for more than one person for each office to be filled. The final filing date for nominating petitions is no later than sixty days before the day of the election and not later than four p.m. of such day.

Upon receipt of the petition or the certification as provided in this section, the county auditor shall without fee place the name of the candidate so nominated on the no-party ballot at the ensuing general election.

⁹ **SECTION 2. AMENDMENT.** Section 4-22-22 of the North Dakota Century Code is amended and reenacted as follows:

4-22-22. Supervisors - Terms of office - Vacancies - Removal - Compensation - Expenses. At the general election to be held in 1972, three district supervisors must be elected. The candidate receiving the largest number of votes is elected for a six-year term; the candidate receiving the second highest number of votes is elected for a four-year term; and the candidate receiving the third highest number of votes is elected for a two-year term. At each succeeding general election, one supervisor must be elected for a term of six years, or until the successor is duly elected and qualified, to each expiring or vacant term. In newly formed districts, three supervisors must be elected at the first general election following the district's

⁹ Section 4-22-22 was also amended by section 1 of House Bill No. 1088, chapter 69, and section 32 of Senate Bill No. 2064, chapter 50.

organization. The candidate receiving the largest number of votes is elected for a six-year term; the candidate receiving the second highest number of votes is elected for a four-year term; and the candidate receiving the third highest number of votes is elected for a two-year term. At each succeeding general election, one supervisor must be elected for a term of six years, or until the successor is duly elected and qualified, to each expiring or vacant term. The county auditor of the county or counties in which the district lies shall return to the secretary of state ~~within fifteen days~~ before four p.m. on the tenth day following any general election a certified abstract of the votes cast in the county at such election for each candidate for district supervisor. ~~At the time that the county auditor transmits the certified abstract of the votes cast for each candidate, the county auditor shall file with the secretary of state a certificate showing the name and address of each candidate.~~ The secretary of state shall canvass the returns and issue certificates of election under chapter 16.1-15.

In order to be eligible for election to the office of supervisor, candidates must be land occupiers and physically living in the district. Candidates must be elected on a nonpartisan ballot. In case the office of any supervisor, for any reason, becomes vacant, the remaining members of the board of supervisors shall, with the advice and consent of the ~~state~~ committee, fill the vacancy by appointment. If vacancies occur in the office of two supervisors, the remaining supervisor and the ~~state~~ committee shall fill the vacancy; and in case the offices of all supervisors of a district become vacant, the ~~state~~ committee shall fill the vacancies by appointment. A supervisor appointed to fill a vacancy holds office until the next general election. A supervisor elected to fill a vacancy serves the balance of the unexpired term in which the vacancy occurred.

Any soil conservation district, upon resolution of the three elected supervisors, may appoint two additional supervisors who shall serve for a term of one year from and after the date of their appointment. Such supervisors must be appointed by a majority of the three elected supervisors and have all the powers, voting privileges, duties, and responsibilities of elected supervisors, except that the expense allowances of the appointed supervisors must be paid by the local soil conservation district concerned. As far as possible, the appointed supervisors shall represent interests within the district which are not represented by the elected supervisors.

Any supervisor of a soil conservation district may, after notice given and hearing held in accordance with chapter 28-32, be removed from office by the ~~state~~ committee.

The supervisors of soil conservation districts are entitled to receive, upon a majority vote of the supervisors, twenty-five dollars for attending each regular or special meeting as compensation for their services. Supervisors of soil conservation districts are entitled to receive travel and subsistence expenses necessarily incurred in attending district, state, or other meetings approved by the state soil conservation committee, which expenses must be paid from appropriations available to the state committee. The compensation and all other expenses including travel incurred by district supervisors while transacting district business and not specifically authorized by the state soil conservation committee must be paid from district funds.

¹⁰ **SECTION 3. AMENDMENT.** Section 4-22-48 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-22-48. Conduct of referendum - Canvass of votes. A referendum upon the question of consolidating two or more soil conservation districts must be conducted in accordance with the laws of the state prescribing the conduct of general elections. After the polls are closed, the board of election shall ~~proceed to~~ canvass the votes and the clerk of the board shall certify to the board of supervisors of the clerk's district and to the state committee the result of the referendum. ~~The clerk shall then securely wrap the ballots cast at the referendum and shall express or mail the ballots to the secretary of the state committee. The committee shall also canvass the ballots and verify the result. The secretary of the committee shall file the ballots in the secretary's office. Upon the expiration of two years after such ballots were canvassed by the state committee they may be destroyed.~~

The state committee shall publish the results of the referendum ~~after having canvassed the ballots and if the committee finds that~~ and if a majority of the ballots cast on the question in each district are for consolidation, the committee shall file with the secretary of state a statement certifying that the consolidated district has been duly and regularly established.

Approved March 19, 1997
Filed March 19, 1997

¹⁰ Section 4-22-48 was also amended by section 34 of Senate Bill No. 2064, chapter 50.

CHAPTER 69

HOUSE BILL NO. 1088

(Representatives Jacobs, Kempenich, Sabby)
(Senators Krauter, Heitkamp)

SOIL CONSERVATION DISTRICT SUPERVISOR COMPENSATION

AN ACT to amend and reenact section 4-22-22 of the North Dakota Century Code, relating to the compensation of soil conservation district supervisors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹ **SECTION 1. AMENDMENT.** Section 4-22-22 of the North Dakota Century Code is amended and reenacted as follows:

4-22-22. Supervisors - Terms of office - Vacancies - Removal - Compensation - Expenses. At the general election to be held in 1972, three district supervisors must be elected. The candidate receiving the largest number of votes is elected for a six-year term; the candidate receiving the second highest number of votes is elected for a four-year term; and the candidate receiving the third highest number of votes is elected for a two-year term. At each succeeding general election, one supervisor must be elected for a term of six years, or until the successor is duly elected and qualified, to each expiring or vacant term. In newly formed districts, three supervisors must be elected at the first general election following the district's organization. The candidate receiving the largest number of votes is elected for a six-year term; the candidate receiving the second highest number of votes is elected for a four-year term; and the candidate receiving the third highest number of votes is elected for a two-year term. At each succeeding general election, one supervisor must be elected for a term of six years, or until the successor is duly elected and qualified, to each expiring or vacant term. The county auditor of the county or counties in which the district lies shall return to the secretary of state within fifteen days following any general election a certified abstract of the votes cast in the county at ~~such~~ the election for each candidate for district supervisor. At the time that the county auditor transmits the certified abstract of the votes cast for each candidate, the county auditor shall file with the secretary of state a certificate showing the name and address of each candidate.

In order to be eligible for election to the office of supervisor, candidates must be land occupiers and physically living in the district. Candidates must be elected on a nonpartisan ballot. In case the office of any supervisor, for any reason, becomes vacant, the remaining members of the board of supervisors shall, with the advice and consent of the state committee, fill the vacancy by appointment. If vacancies occur in the office of two supervisors, the remaining supervisor and the state committee shall fill the vacancy; and in case the offices of all supervisors of a district become vacant, the state committee shall fill the vacancies by appointment. A supervisor appointed to fill a vacancy holds office until the next general election. A supervisor

¹¹ Section 4-22-22 was also amended by section 2 of Senate Bill No. 2172, chapter 68, and section 32 of Senate Bill No. 2064, chapter 50.

elected to fill a vacancy serves the balance of the unexpired term in which the vacancy occurred.

Any soil conservation district, upon resolution of the three elected supervisors, may appoint two additional supervisors who shall serve for a term of one year from and after the date of their appointment. Such supervisors must be appointed by a majority of the three elected supervisors and have all the powers, voting privileges, duties, and responsibilities of elected supervisors, except that the expense allowances of the appointed supervisors must be paid by the local soil conservation district concerned. As far as possible, the appointed supervisors shall represent interests within the district which are not represented by the elected supervisors.

Any supervisor of a soil conservation district may, after notice given and hearing held in accordance with chapter 28-32, be removed from office by the state committee.

The supervisors of soil conservation districts are entitled to receive, upon a majority vote of the supervisors, up to twenty-five dollars for attending each regular or special meeting or for attending other meetings or events in the performance of their official duties as compensation for their services. Supervisors of soil conservation districts are entitled to receive travel and subsistence expenses necessarily incurred in attending district, state, or other meetings ~~approved by the state soil conservation committee, which expenses must be paid from appropriations available to the state committee.~~ The compensation and all other expenses including travel incurred by district supervisors while transacting district business ~~and not specifically authorized by the state soil conservation committee~~ must be paid from district funds.

Approved March 5, 1997
Filed March 6, 1997

CHAPTER 70

HOUSE BILL NO. 1362

(Representatives Gerntholz, Huether, Sabby)
(Senators Robinson, Wanzek)

AGRICULTURAL HALL OF FAME

AN ACT to create and enact two new sections to chapter 4-24 of the North Dakota Century Code, relating to induction in the North Dakota agricultural hall of fame; and to amend and reenact section 4-24-08 of the North Dakota Century Code, relating to the North Dakota agricultural hall of fame.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-24-08 of the North Dakota Century Code is amended and reenacted as follows:

4-24-08. North Dakota winter show - Official site. ~~The official site of the North Dakota winter show, an annual exhibition, is designated to be the city of held in Valley City. No other event may be designated as, nor call itself, the North Dakota winter show, or any similar name designed to confuse the public with the exhibition sponsored every year in the city of Valley City by the North Dakota winter show, a nonprofit corporation organized under the laws of this state. The North Dakota winter show is the official site of the North Dakota agricultural hall of fame.~~

SECTION 2. Two new sections to chapter 4-24 of the North Dakota Century Code are created and enacted as follows:

North Dakota agricultural hall of fame - Establishment - Induction. The North Dakota agricultural hall of fame is established for the purpose of honoring individuals who have made outstanding contributions to the state's agricultural industry.

1. To be eligible for induction into the North Dakota agricultural hall of fame, an individual must:
 - a. Have reached the age of forty-five;
 - b. Have been involved in the state's agricultural industry for a minimum of twenty years; and
 - c. Be nominated for induction by a member of the North Dakota agricultural hall of fame committee.
2. The nomination provided for in this section must be in writing and must include the nominee's personal history, including education, employment, history of contributions to and achievements in the state's agricultural industry, participation in professional organizations, career-related activities and civic contributions, honors, and awards, if possible a statement from the candidate, and the date and signature of the nominator.

3. The North Dakota agricultural hall of fame committee shall select inductees by majority vote. The selections must be based on the nominee's record of accomplishment in the state's agricultural industry. The committee shall give due consideration to the nominee's participation in organizations represented by members of the North Dakota agricultural hall of fame committee.

North Dakota agricultural hall of fame committee - Members.

1. The North Dakota agricultural hall of fame committee consists of the following individuals, each of whom must be selected by the governing body of the entity or the official to be represented:
 - a. A representative of the North Dakota winter show;
 - b. A representative of agricultural media;
 - c. A representative of vocational agriculture;
 - d. A representative of the North Dakota stockmen's association;
 - e. A representative of the North Dakota grain growers association;
 - f. A representative of the North Dakota oilseed council;
 - g. A representative of county extension agents;
 - h. A representative of the commissioner of agriculture;
 - i. A representative of the North Dakota pork producers;
 - j. A representative of the North Dakota sheep producers;
 - k. A representative of the national agricultural marketing association;
 - l. A representative of the North Dakota implement dealers association;
 - m. A representative of the North Dakota farm bureau;
 - n. A representative of the North Dakota farmers union;
 - o. A representative of the national farmers organization.
2. The committee, by a two-thirds majority, may add a new agricultural organization to the North Dakota agricultural hall of fame committee. The committee, by a majority, may remove the name of an organization that no longer exists from the North Dakota agricultural hall of fame committee.
3. The representative of the North Dakota winter show shall serve as the chairman of the committee and the secretary of the North Dakota winter show shall serve as the secretary of the committee. The chairman shall determine the time and location of all committee meetings.

4. The committee may induct no more than three nominees into the North Dakota agricultural hall of fame in 1998 and no more than two nominees each year thereafter. Any person who is nominated for induction into the North Dakota agricultural hall of fame and receives at least one vote is automatically considered for induction the following year. The nominee may provide the committee with updated or additional information to be considered.

5. The committee shall select the inductees by secret ballot and shall announce the selection at the North Dakota agricultural hall of fame banquet, to be held each year during the North Dakota winter show. Inductees must receive a plaque and have their photographs displayed at the North Dakota agricultural hall of fame.

Approved April 3, 1997

Filed April 3, 1997

CHAPTER 71

HOUSE BILL NO. 1115

(Agriculture Committee)

(At the request of the Wheat Commission)

WHEAT TAX LEVY

AN ACT to amend and reenact section 4-28-07 of the North Dakota Century Code, relating to the wheat tax levy rate.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-28-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-28-07. Wheat tax levy. A tax of ~~five~~ eight mills per bushel [35.24 liters] by weight must be levied and imposed upon all wheat grown in this state, delivered into this state, or sold through commercial channels to a first purchaser in this state. The tax must be levied and assessed at the time of sale and deducted by the purchaser from the price paid, or in the case of a lien, pledge, or mortgage, deducted from the proceeds of the loan or claim secured, subject to adjustment at the time of settlement in the event the number of bushels [liters] are not accurately determined at the time of the lien, pledge, or mortgage. At the time of sale, the first purchaser in this state shall issue and deliver to the producer or seller a record of the transaction in ~~such~~ the manner ~~as~~ prescribed by the commission ~~may~~ prescribe.

Any producer who sells wheat to a first purchaser in this state and who is subject to the deduction provided in this chapter ~~may~~, within sixty days following ~~such~~ the deduction or final settlement, may make application by personal letter to the wheat commission for a refund application blank. Upon the return of the blank, properly executed by the producer, accompanied by a record of the deduction by the purchaser, the producer must be refunded the net amount of the deduction collected. If no request for refund has been made within the period prescribed above, then the producer is presumed to have agreed to ~~such~~ the deduction. However, a producer, for any reason, having paid the tax more than once on the same wheat, upon furnishing proof of this to the commission, is entitled to a refund of the overpayment.

The commission, to inform the producer, shall develop and disseminate information and instructions relating to the purpose of the wheat tax and manner in which refunds may be claimed and to this extent shall cooperate with governmental agencies, state and federal, and private businesses engaged in the purchase of wheat.

Approved April 3, 1997

Filed April 3, 1997

CHAPTER 72**HOUSE BILL NO. 1433**

(Representatives D. Johnson, Brandenburg, Nelson)
(Senators O'Connell, Wanzek, Solberg)

PESTICIDE CONTROL BOARD FUNDS

AN ACT to create and enact a new section to chapter 4-35 of the North Dakota Century Code, relating to the receipt of funds by the pesticide control board to establish a minor use pesticide fund; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4-35 of the North Dakota Century Code is created and enacted as follows:

Commissioner of agriculture - Pesticide control board - Recovery of funds.

The commissioner of agriculture may accept, on behalf of the pesticide control board, funds received for expenses paid by the pesticide control board relating to the registration of pesticides or donations offered to or for the benefit of the pesticide control board. All moneys received under this section must be deposited in the minor use pesticide fund to pay expenses relating to the registration of pesticides or for the specific purpose for which they are given. The pesticide control board shall attempt, whenever possible, to recover funds expended relating to the registration of pesticides and shall adopt rules to administer provisions of this section.

SECTION 2. MINOR USE PESTICIDE FUND - CONTINUING APPROPRIATION. The minor use pesticide fund is created as a special fund in the state treasury. All moneys in the fund are appropriated on a continuing basis to the pesticide control board for the purpose of conducting or commissioning studies, investigations, and evaluations regarding the registration and use of pesticides for minor crops, minor uses, and emergency uses.

SECTION 3. TRANSFER. The office of management and budget shall transfer \$250,000, or so much of the sum as may be necessary, from the environment and rangeland protection fund to the minor use pesticide fund, for the biennium beginning July 1, 1997, and ending June 30, 1999.

Approved April 8, 1997
Filed April 8, 1997

CHAPTER 73

SENATE BILL NO. 2315

(Senators Thane, Krauter, Tomac)
(Representatives Carlisle, Thompson)

CHEMICAL APPLICATOR FINANCIAL RESPONSIBILITY

AN ACT to create and enact a new section to chapter 4-35 of the North Dakota Century Code, relating to proof of financial responsibility for persons engaged in commercial chemical application; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4-35 of the North Dakota Century Code is created and enacted as follows:

Proof of financial responsibility. A commercial pesticide applicator certificate may not be issued or renewed unless the applicant furnishes proof of financial responsibility as provided in this section. Minimum financial responsibility must be demonstrated annually in the amount of one hundred thousand dollars, and may be demonstrated by a notarized letter from an officer of a financial institution or from a certified public accountant attesting to the existence of net assets equal to at least one hundred thousand dollars, a performance bond, or a general liability insurance policy. The performance bond or insurance policy must contain a provision requiring the issuing company to notify the commissioner of agriculture at least ten days before the effective date of cancellation, termination, or other modification of the bond or insurance policy. The commissioner of agriculture must immediately request the suspension of the certification of a person who fails to maintain the minimum financial responsibility standards of this section. If there is any recovery against the certificate holder, the holder must demonstrate continued compliance with the minimum standards of this section. An employee of a commercial pesticide application business is not required to meet these standards separately if the business documents compliance with the minimum financial responsibility standards of this section. An application for reinstatement of a suspended certificate under this section must be accompanied by proof of satisfaction of any judgment previously rendered. A rancher is exempt from this section if the rancher is required to obtain a commercial pesticide applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on January 1, 1998.

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 74

SENATE BILL NO. 2083

(Senators Tomac, G. Nelson)

(Representatives Aarsvold, Nicholas)

(At the request of the Commissioner of Agriculture)

PESTICIDE AND CONTAINER DISPOSAL PROGRAM

AN ACT to provide for the continuation of an agricultural pesticide and pesticide container disposal program; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Pesticide and pesticide container disposal program - Pesticide container management - Compensation.

1. The definitions contained in section 4-35-05 apply to this section.
2. In consultation with an advisory board consisting of the state health officer, director of the North Dakota state university extension service, two individuals representing agribusiness organizations, and two individuals representing farm organizations, all of whom must be selected by the commissioner of agriculture, the commissioner of agriculture shall continue to implement the project authorized by section 1 of chapter 72 of the 1995 Session Laws, which is known as project safe send. The purpose of the project is to:
 - a. Collect and either recycle or dispose of unusable pesticides and empty pesticide containers. The commissioner shall provide for the establishment and operation of temporary collection sites for the containers and pesticides. The commissioner may limit the type and quantity of containers and pesticides acceptable for collection.
 - b. Promote proper pesticide container management. In consultation with the director of the North Dakota state university extension service, the commissioner shall promote proper methods of pesticide container management, including information on the variety of pesticide containers available.
 - c. Evaluate recycling options and investigate markets and business opportunities to encourage recycling of containers for resource recovery.
3. Any entity collecting pesticide containers or unusable pesticides shall manage and dispose of the containers and pesticides in compliance with applicable federal and state requirements. When called upon, any state agency shall assist the commissioner in implementing the project.
4. For services rendered in connection with the design and implementation of this project, the members selected by the commissioner of agriculture are entitled to reimbursement for mileage and travel expenses in the same manner and for the same amounts provided for state employees

and officials. Compensation and expense reimbursement must be paid from the environment and rangeland protection fund.

SECTION 2. Project scope and evaluation - Proposed legislation. The project described in section 1 of this Act must occur in areas to be determined by the commissioner of agriculture in consultation with the advisory board under subsection 2 of section 1 of this Act. Before December 12, 1998, the commissioner of agriculture shall determine whether the project implemented and continued under section 1 of this Act should be continued. If the commissioner determines that the project should be continued or expanded, the commissioner shall introduce appropriate legislation in the fifty-sixth legislative assembly.

SECTION 3. EXPIRATION DATE. This Act is effective through July 31, 1999, and after that date is ineffective.

Approved April 2, 1997
Filed April 3, 1997

ALCOHOLIC BEVERAGES

CHAPTER 75

SENATE BILL NO. 2106

(Industry, Business and Labor Committee)

(At the request of the Attorney General)

RETAIL ALCOHOL LICENSEE BACKGROUND CHECKS

AN ACT to create and enact a new subsection to section 5-02-02 of the North Dakota Century Code, relating to payment of background check costs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 5-02-02 of the North Dakota Century Code is created and enacted as follows:

As a condition precedent to a background check, the attorney general may require the applicant to pay, in advance, an estimated additional fee necessary to defray the actual cost of a background check of a person for whom adequate background information sources are not readily available. The estimated additional fee must be placed in the attorney general's refund fund for use to defray the actual expenses of the background check. The remainder of the funds must be returned to the person within thirty days of the conclusion of the background check. In addition, the attorney general may require the applicant or such other person subject to a background check to execute a written consent if needed by the attorney general to obtain background or criminal history information.

Approved April 1, 1997

Filed April 2, 1997

CHAPTER 76

HOUSE BILL NO. 1114

(Industry, Business and Labor Committee)
(At the request of the Attorney General)

BEER KEG MARKETING

AN ACT to amend and reenact subsections 1 and 3 of section 5-02-07.2 of the North Dakota Century Code, relating to registration and marketing of beer sold in kegs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 3 of section 5-02-07.2 of the North Dakota Century Code are amended and reenacted as follows:

1. Any retail alcoholic beverage licensee who sells beer in a container with a liquid capacity greater than six gallons [22.71 liters] must place a ~~distinctive symbol, notation, or mark unique to the licensee~~ the licensee's state retail alcoholic beverage license number on the container and also must mark the container with a "registration" number or letters, or both, unique to that container. The paint or ink used to mark the containers or other manner of marking the containers must be approved by the attorney general.
3. Each retail alcoholic beverage licensee shall ~~register his or her unique identification symbol, notation, or mark with the attorney general and shall~~ permit any law enforcement officer to inspect the records required to be kept pursuant to this section during times the retail establishment is normally open for business or at other reasonable times.

Approved January 31, 1997
Filed January 31, 1997

CHAPTER 77**HOUSE BILL NO. 1371**
(Representatives DeKrey, Weisz)**LOCAL ALCOHOL REGULATIONS**

AN ACT to amend and reenact section 5-02-09 of the North Dakota Century Code, relating to the establishment of local regulations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-02-09 of the North Dakota Century Code is amended and reenacted as follows:

5-02-09. Local regulations. The local governing body by ordinance or resolution may regulate or restrict the operation of licensees including among other things determining the number of licenses to be granted, establishing health and safety standards for licensed premises, setting of hours and ~~prohibition~~ regulation of open door policies by fraternal organizations or private clubs, and regulation of dancing or various forms of entertainment on the premises.

Approved March 25, 1997
Filed March 26, 1997

BANKS AND BANKING

CHAPTER 78

HOUSE BILL NO. 1060

(Legislative Council)

(Government Organization Committee)

CREDIT UNION AND BANKING BOARD MEMBERSHIP AND DUTIES

AN ACT to amend and reenact subsection 2 of section 6-01-03, sections 6-01-04, 6-01-04.3, subsection 7 of section 6-03-02, sections 6-03-07, 6-03-21, subsection 1 of section 6-03-47.2, sections 6-03-69, 6-03-71, subsections 5 and 6 of section 6-06-02, subsection 12 of section 6-06-06, subsection 1 of section 6-06-08, sections 6-06-19, 6-06-21.1, and 6-06-26 of the North Dakota Century Code, relating to the membership of the state credit union board and the powers and duties of the state banking board and state credit union board; and to repeal section 6-06-18 of the North Dakota Century Code, relating to state credit union board approval of interest rates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 6-01-03 of the North Dakota Century Code is amended and reenacted as follows:

2. The state credit union board consists of the commissioner and four members to be appointed by the governor ~~from a panel of five names of persons, residents of North Dakota, to be furnished to the governor by the North Dakota credit union league.~~ Two of the members of the state credit union board must have at least three years' experience as an officer, director, or committee member of a North Dakota state-chartered credit union, one member of the board must have had at least three years of experience as an officer, director, or committee member of a federally chartered credit union, and one member of the board must be a lay member from the public at large. ~~The panel of names submitted to the governor by the North Dakota credit union league must consist of persons whose qualifications satisfy the requirements created by the specific vacancy being filled. Appointments~~ The term of office of appointed board members is for a term of five years. The members of the board serving in office on July 1, 1979, shall continue to serve until the end of their respective terms. The appointments of the two additional members are effective July 1, 1979, except that these two additional members shall choose by lot which shall serve for two and three years respectively. In case of a vacancy in ~~such~~ the board, by death, resignation, or removal of an appointed member, ~~the governor shall appoint an individual to fill the vacancy must be filled by appointment by the governor for the unexpired term.~~ The commissioner is chairperson of such chairs the board and the attorney general is, ex officio, the attorney for such the board. The assistant commissioner shall serve as its secretary. The members of the state

credit union board ~~shall~~ are entitled to receive the same remuneration as is provided for the members of the state banking board. The state credit union board shall hold meetings in March, June, September, and December of each year and special meetings at the call of the commissioner in such places as the commissioner may designate within the state of ~~North Dakota~~.

SECTION 2. AMENDMENT. Section 6-01-04 of the North Dakota Century Code is amended and reenacted as follows:

6-01-04. Powers and duties of the state banking board and state credit union board. The board ~~has power to make such~~ may adopt rules and regulations for the government of financial corporations mentioned in section 6-01-01 ~~as in its judgment may seem wise and expedient, but such to the extent the~~ rules and regulations may do not conflict with any law of this state or of the United States. ~~The board shall review all reports made by the financial corporations and institutions under its jurisdiction and all reports of regular and special examinations thereof made by the commissioner, and shall approve or disapprove such reports.~~ The board shall make and enforce such orders as, ~~in its judgment,~~ may be ~~are~~ necessary or proper to protect the public and the depositors or creditors of ~~said~~ those financial corporations and institutions.

The same powers are given to the state credit union board with reference to credit unions as are ~~herein~~ granted to the state banking board with reference to financial corporations named in this chapter.

SECTION 3. AMENDMENT. Section 6-01-04.3 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-01-04.3. Assessment of civil money penalties.

1. ~~The state banking commissioner or the board and the state credit union board~~ may assess a civil money penalty against a financial institution or financial corporation, including state-chartered banks, credit unions, trust companies, and savings and loan associations, or an officer, director, employee, agent, or person participating in the conduct of the affairs of the financial institution or corporation, upon finding one or more of the following:
 - a. Failure to comply with a permanent or temporary cease and desist order that has been voluntarily consented to or issued pursuant to section 6-01-04.2;
 - b. Failure to comply with a final order that has been voluntarily consented to or issued following formal proceedings under chapter 28-32;
 - c. Payment of dividends in violation of section 6-03-36;
 - d. Loans and leases to one borrower or concern which exceed the limitations set forth in sections 6-03-59 and 6-03-59.1;
 - e. Loans to directors, officers, and employees in violation of section 6-03-60;

- f. The intentional filing of inaccurate or misleading call reports required by section 6-03-70;
 - g. Violations of loan limitations under subsection 7 of section 6-06-12;
 - h. Loans in violation of section 6-06-14; or
 - i. Failure to file notice of change of control under section 6-08-08.1.
2. The commissioner or the board shall commence commences administrative proceedings to assess civil money penalties by serving a complaint on the respondent stating the factual basis for the commissioner's or board's belief that a violation has occurred and the amount of civil penalties that the ~~board~~ complaint seeks to impose. The complaint must contain a notice of an opportunity for an administrative hearing conducted under chapter 28-32. The date for the hearing must be set not less than thirty days after the date the complaint is served upon the respondent. If assessment of civil money penalties are proposed based on conditions described in subdivisions c through i of subsection 1 of this section, a complaint may not be filed unless the respondent has been provided with prior orders, examination reports, or other written communications, and has willfully refused to take corrective action that the respondent was capable of taking at the time.
 3. If the respondent fails to answer the complaint within twenty days of its service, ~~or if the~~ commissioner or board may enter an order imposing civil money penalties upon the respondent. If a hearing is held and the board concludes that the record so warrants, the board may enter an order imposing civil money penalties upon the respondent. The assessment order is effective and enforceable immediately upon service or upon a date specified in the order, and remains effective and enforceable until it is stayed, modified, terminated, or set aside by action of the board or a reviewing court.
 4. In determining the amount of civil penalty imposed, the commissioner or board shall consider the good faith of the financial institution or the person being assessed, the gravity of the violation and any previous violations. The commissioner or board may not impose a civil money penalty in excess of five thousand dollars for each occurrence and one hundred dollars per day for each day that the violation continues after service of an order. Any civil money penalties collected under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund; ~~if the fund is established by the legislative assembly.~~

¹ **SECTION 4. AMENDMENT.** Subsection 7 of section 6-03-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

¹ Section 6-03-02 was also amended by section 4 of Senate Bill No. 2118, chapter 79.

7. To exercise, ~~by its board of directors or duly authorized officers or agents subject to law as determined by the board by order or rule,~~ all ~~such the~~ incidental powers as are necessary to carry on the business of banking, including: discounting and negotiating promissory notes, bills of exchange, drafts, and other evidences of debt; receiving deposits; buying and selling exchange, coin, and bullion; and loaning money upon real or personal security, or both; soliciting and receiving deposit in the nature of custodial accounts funded only in savings accounts or certificates of deposit for the purpose of retirement fund contracts or pension programs, and such custodial accounts are exempt from ~~the provisions of~~ chapter 6-05; providing services to its customers involving electronic transfer of funds to the same extent that other financial institutions chartered and regulated by an agency of the federal government are permitted to provide ~~such those~~ services within this state. A bank ~~which that~~ provides electronic funds transfer equipment and service to its customers, at premises separate from its main banking house or duly authorized facility approved by the state banking board, must make ~~such the~~ equipment and service available for use by customers of any other bank upon the request of ~~such the~~ other bank to share its use and the agreement of ~~such the~~ other bank to share pro rata all costs incurred in connection with its installation and operation, and ~~such the~~ electronic operations are not deemed to be the establishment of a branch, nor of a separate facility. ~~Such The~~ electronic operations at premises separate from its banking house or duly authorized facility, must be considered a customer electronic funds transfer center and may be established subject to rules that the state banking board ~~shall adopt~~ adopts. A financial institution engaging in electronic funds transfers in this state may impose a transaction fee for the use of an electronic funds transfer facility if the imposition of the fee is disclosed at a time and in a manner that allows the user to terminate or cancel the transaction without incurring the transaction fee. The fee may be in addition to any other charge imposed by the operator at an electronic funds transfer facility or by any other financial institution.

SECTION 5. AMENDMENT. Section 6-03-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-03-07. Investment in banking facility, furniture, and fixtures - Limitation.

No state banking association may invest more than one hundred percent of the amount of its unimpaired capital stock and surplus in a banking facility, furniture, fixtures, and equipment without the approval of the commissioner or the state banking board.

SECTION 6. AMENDMENT. Section 6-03-21 of the North Dakota Century Code is amended and reenacted as follows:

6-03-21. Impairment of capital - Dividends stopped - Action by board - Restoration. Whenever the capital of any state banking association becomes impaired or the capital stock reduced below the amount required by this title or by the articles of incorporation, no dividend may be declared nor distribution of profits made thereafter while any debts of the association remain unsatisfied, nor until ~~such the~~ the impairment or deficiency is made good. Whenever it appears that the capital of any state banking association has become impaired or its capital stock reduced, the commissioner shall report the same to the state banking board immediately. ~~Such board~~ The commissioner thereupon shall issue and enforce the necessary order restraining the declaring of dividends and requiring that ~~such the~~ the impairment or

deficiency be made good. ~~Such~~ The impairment or deficiency must be made good within sixty days thereafter, or the commissioner, upon the order or direction of the state banking board, may take charge of ~~such~~ the state banking association and proceed to liquidate the ~~same~~ association as in case of insolvency.

SECTION 7. AMENDMENT. Subsection 1 of section 6-03-47.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Bonds, notes, or debentures of any corporation rated at "A" or higher by a nationally recognized rating service approved by the ~~state banking board commissioner~~, provided that ~~such~~ the investments may not be ~~made to~~ exceed for any one corporation twenty-five percent of the unimpaired capital and surplus of the banking association; and

SECTION 8. AMENDMENT. Section 6-03-69 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-03-69. Report of examining committee. The board of directors shall ~~be responsible for submitting~~ submit to the ~~state banking board commissioner~~ a report of examining committee on forms provided by the commissioner. The report ~~shall~~ must reflect the results of a careful and thorough examination of the assets of the bank including loans and discounts of every nature and the securities and collaterals belonging ~~thereto~~ to the bank. The valuation of the assets of the bank ~~shall~~ must be compared with the records of the bank. The report ~~shall~~ must be made a part of the minutes of a regular meeting of the board of directors. The commissioner may refuse to accept ~~such~~ the report if found to be not in accordance with acceptable accounting principles.

Any of the following methods may be used to conduct the examination required by this section:

1. Examination by the board of directors or its examining committee. When this method is employed, the examination must be conducted and the report submitted in July of each year.
2. Examination on an annual basis by an independent certified public accountant or firms composed of such accountants, or auditors of the bank's holding company, if any.
3. Examination by an autonomous internal audit control system. The individual directing the internal audit control system shall submit to the board of directors each quarter an interim report as to the degree of compliance with the internal audit control system and shall express an opinion as to the adequacy of the internal controls. A complete report ~~shall~~ must be submitted annually to the board of directors.

SECTION 9. AMENDMENT. Section 6-03-71 of the North Dakota Century Code is amended and reenacted as follows:

6-03-71. Bonds of officers and employees. All officers and employees of any state banking association, before entering upon their duties, shall furnish a ~~good and sufficient~~ bond to the association in ~~such~~ the sum and upon ~~such~~ the conditions as ~~may be~~ required by the board of directors in keeping with rules ~~and regulations~~ relative thereto established by the state banking board. All ~~such~~ bonds must be approved by the board of directors of ~~such~~ the association and are subject to the

approval of the ~~state banking board~~ commissioner. A record of the approval of ~~such the~~ bonds by the board of directors of the association must be made on the records of the bank, and ~~such the~~ bonds must be filed with the ~~state banking board commissioner~~. Stockholders of ~~such the~~ banks are not eligible as bondsmen for ~~such the~~ officers.

SECTION 10. AMENDMENT. Subsections 5 and 6 of section 6-06-02 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

5. The ~~commissioner board~~, within thirty days after the receipt of certificate and bylaws, shall determine whether they comply and are consistent with ~~the provisions and purposes~~ of this chapter.
6. The ~~commissioner shall notify the applicants and the state credit union board of his decision, and if it is favorable, the~~ board shall instruct the secretary of state to issue a charter, which must be attached to the certificate of organization and returned, together with the bylaws, to the applicants upon payment of a filing fee of thirty dollars to the secretary of state.

SECTION 11. AMENDMENT. Subsection 12 of section 6-06-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12. To exercise any incidental power necessary or requisite to enable the credit union to carry out effectively the business for which it is incorporated, or as determined by the board by order or rule.

² **SECTION 12. AMENDMENT.** Subsection 1 of section 6-06-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Credit unions and the permanent loan funds ~~thereof~~ of credit unions, if any, are under the supervision of the ~~state credit union board commissioner~~. Credit unions shall report to the commissioner when called by the commissioner, and at least twice each year. The commissioner shall prescribe the forms for ~~such the~~ reports. The reports must be received by the commissioner within thirty days of the call. At the discretion of the commissioner, a call may be complied with by submission of a photocopy of the call report submitted to the national credit union administration, or a printout retrieved from computer facilities in the department of banking and financial institutions and connected to those of the national credit union administration. The commissioner may call for special reports from any credit union whenever in the commissioner's judgment ~~the same~~ it is necessary to obtain complete knowledge of the condition of the credit union. Every credit union ~~which that~~ fails to make and transmit any report required in pursuance of this section shall forfeit and pay to the state a penalty of two hundred dollars for delinquency. The commissioner may waive the

² Section 6-06-08 was also amended by section 1 of Senate Bill No. 2129, chapter 86.

penalty for reports filed late, not exceeding three business days beyond the due date required by this section.

³ **SECTION 13. AMENDMENT.** Section 6-06-19 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-06-19. Authority to borrow - Limitation - Exception. A credit union may borrow money from any source, but the total borrowings may not exceed twenty-five percent of its assets unless the commissioner authorizes a larger amount. The ~~state credit union board; in the exercise of its discretion;~~ or commissioner may suspend or restrict the borrowing powers of a credit union. The limitation on borrowing does not apply to a corporate central credit union which is limited to borrowing up to five times its capital, surplus, and reserve fund. For the purposes of this section, capital, surplus, and reserve fund for a corporate central credit union includes statutory or regulatory reserves, reserves established for contingencies or any other purposes, undivided earnings, all sums on deposit by other credit unions which are permanent capital base funds as defined by the bylaws of the corporate central credit union, or any other funds being held by the corporate central credit union for the purpose of maintaining a capital base.

SECTION 14. AMENDMENT. Section 6-06-21.1 of the North Dakota Century Code is amended and reenacted as follows:

6-06-21.1. Amount and manner of establishing special reserves for delinquent loans and investments. Whenever the reserve, required by section 6-06-21 is inadequate for bad loans or investments, a special reserve for delinquent loans and investments must be established. The amount of ~~such~~ the reserve must be determined by the ~~state credit union board or commissioner.~~ The state credit union board is hereby granted the authority to may adopt such rules and regulations as it deems advisable for the establishment of special reserves for delinquent loans and investments.

SECTION 15. AMENDMENT. Section 6-06-26 of the North Dakota Century Code is amended and reenacted as follows:

6-06-26. Dividends. A credit union, upon action by its board of directors, may declare a dividend to be paid from the remaining net earnings or, in the absence of sufficient net earnings, as authorized by the ~~state credit union board or commissioner.~~ The board of directors shall establish the dividend and the dividend period. The members may fix the maximum rate of dividends which shall to be paid. Such The dividends must be paid from the net earnings of the credit union, after establishing a special reserve for delinquent loans as required by the state credit union board or commissioner. A credit union, upon action of its board of directors, may authorize an interest refund to members of record at the close of business the last day of any dividend period in proportion to the interest paid during that dividend period. Interest refunds may be made to borrowers only after provision has been made for a special reserve for delinquent loans if required by the ~~state credit union board or commissioner.~~

³ Section 6-06-19 was also amended by section 3 of Senate Bill No. 2129, chapter 86.

SECTION 16. REPEAL. Section 6-06-18 of the North Dakota Century Code is repealed.

Approved February 11, 1997
Filed February 11, 1997

CHAPTER 79

SENATE BILL NO. 2118

(Industry, Business and Labor Committee)

(At the request of the Department of Banking and Financial Institutions)

FINANCIAL INSTITUTION EMPLOYEES AND SHAREHOLDERS

AN ACT to create and enact a new subsection to section 6-03-27 of the North Dakota Century Code, relating to filing a list of bank holding company stockholders; and to amend and reenact subsection 6 of section 6-01-04.1, section 6-01-07, if Senate Bill No. 2287 of the fifty-fifth legislative assembly does not become effective, section 6-01-20, and subsection 1 of section 6-03-02 and section 6-03-15.1 of the North Dakota Century Code, relating to removal of a financial corporation's or institution's employees, confidentiality of bank and credit union reports of examination, Bank of North Dakota access to examination and other information, a banking association's period of existence, and temporary relocating of a bank office.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 6-01-04.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. When any officer, director, employee, or other person participating in the conduct of the affairs of a financial corporation or institution is charged with a felony in state or federal court, involving ~~conduct related to the financial corporation or institution~~ dishonesty or breach of trust, the commissioner may immediately suspend the person from office or prohibit the person from any further participation in the financial corporation's or institution's affairs. The order is effective immediately upon service of the order on the financial corporation or institution and the person charged, and remains in effect until the criminal charge is finally disposed of or until modified by the board. If a judgment of conviction, a federal pretrial diversion, or similar state order or judgment is entered, the board may order that the suspension or prohibition be made permanent. A finding of not guilty or other disposition of the charge ~~shall~~ does not preclude the commissioner or the board from pursuing administrative or civil remedies.

SECTION 2. AMENDMENT. Section 6-01-07 of the North Dakota Century Code is amended and reenacted as follows:

6-01-07. Records of state banking board, state credit union board, and commissioner. The state banking board and state credit union board shall keep a full and complete record of all their proceedings and of all orders made by them. The records and the proceedings of the boards and commissioner ~~shall be~~ are open in accordance with sections 44-04-18 and 44-04-19. All reports, except supervisory reports of examination, made by or filed with the board or the commissioner relating to any financial institution, must be open to inspection and examination by stockholders, shareholders, depositors, creditors, and sureties on any bonds of any

such institution or on the bonds of any officer or employee thereof, subject, however, to the following restrictions:

1. ~~Any~~ A stockholder, shareholder, depositor, creditor or surety of any institution desiring to inspect the information specified above of any ~~such~~ institution shall make a written request for ~~such~~ the inspection.
2. ~~Any such~~ A written request must:
 - a. Specify the information to which access is requested; and
 - b. Give the reasons for the request.
3. Upon ~~such~~ written request, the commissioner, or any person designated in writing by the commissioner, may disclose information specified in subsection 1 of section 6-01-07.1 only upon determining and to the extent that good cause exists for the disclosure.
4. Either prior to or at the time of any disclosure, the commissioner or designee shall impose such terms and conditions as the commissioner deems necessary to protect the confidential nature of the information, the financial integrity of the financial institution to which the information relates, and the legitimate privacy interests of any individual named in ~~such~~ the information.

⁴ **SECTION 3. AMENDMENT.** If Senate Bill No. 2287 of the fifty-fifth legislative assembly does not become effective, section 6-01-20 of the North Dakota Century Code is amended and reenacted as follows:

6-01-20. Bank of North Dakota entitled to records. The commissioner is authorized and directed to permit the president of the Bank of North Dakota, or any other officer of the Bank of North Dakota authorized by ~~said~~ the president, to examine all reports, statements, records, books, files, and documents of any state bank, savings and loan association, or credit union in the possession of ~~said~~ the commissioner, except as noted in this section. The commissioner also is authorized and directed to give to ~~said~~ the president of the Bank of North Dakota, or to any ~~person~~ Bank of North Dakota officer designated by ~~said~~ the president, upon request, any and all information that ~~he~~ the commissioner may have concerning the solvency and financial standing of any state bank, savings and loan association, or credit union. Any record obtained from a federal or other state regulatory authority may not be disclosed to the Bank of North Dakota unless specific authorization is received from the applicable federal or state regulatory authority.

⁵ **SECTION 4. AMENDMENT.** Subsection 1 of section 6-03-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. To have ~~succession for a period of twenty-five years from its organization~~ a perpetual existence, unless it is sooner dissolved

⁴ Section 6-01-20 was repealed by section 2 of Senate Bill No. 2287, chapter 80.

⁵ Section 6-03-02 was also amended by section 4 of House Bill No. 1060, chapter 78.

according to the provisions of this title, or unless its franchise becomes forfeited by ~~some~~ a violation of law.

SECTION 5. AMENDMENT. Section 6-03-15.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-03-15.1. Temporary relocation of bank operations. In the event of an emergency, a bank may apply to the commissioner to relocate its main banking house; ~~banking house or office; paying and receiving station; or drive-in and walk-up~~ facility until the former location is repaired to allow bank operations to resume. No notice or public hearing need be held to act upon the temporary relocation request.

SECTION 6. A new subsection to section 6-03-27 of the North Dakota Century Code is created and enacted as follows:

The commissioner may request at least annually a list of all shareholders of a bank holding company controlling a state-chartered banking institution.

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 80**SENATE BILL NO. 2287**

(Senator Klein)
(Representative Murphy)

**DEPARTMENT OF BANKING AND FINANCIAL
INSTITUTIONS RECORDS ACCESS**

AN ACT to amend and reenact subsection 6 of section 6-01-07.1 of the North Dakota Century Code, relating to access to records held by the department of banking and financial institutions; and to repeal section 6-01-20 of the North Dakota Century Code, relating to access by the Bank of North Dakota to bank, savings and loan, and credit union records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 6-01-07.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. ~~Nothing in this~~ This section shall be construed to does not limit the right of access of the ~~Bank of North Dakota to the department's records of all state banks, savings and loan associations, and credit unions, as provided by section 6-01-20, nor to limit the right of access of~~ stockholders, shareholders, depositors, creditors, and sureties on bonds to specified department records as, and to the extent, provided by section 6-01-07.

⁶ **SECTION 2. REPEAL.** Section 6-01-20 of the North Dakota Century Code is repealed.

Approved March 21, 1997
Filed March 21, 1997

⁶ Section 6-01-20 was amended by section 3 of Senate Bill No. 2118, chapter 79.

CHAPTER 81**HOUSE BILL NO. 1390**

(Representative Grande)
(Senator Krebsbach)

BANK REAL ESTATE APPRAISALS

AN ACT to amend and reenact section 6-03-05 of the North Dakota Century Code, relating to appraisals of real estate that is collateral for a loan by state-chartered banks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-03-05. Loans on real estate - Regulation - Limitation. Before any real estate loan ~~in excess of one hundred thousand dollars~~ is made an appraisal must be conducted by a licensed or certified appraiser ~~as if required by the Federal~~ federal Financial Reform, Recovery, and Enforcement Act of 1989 [Pub. L. 101-73; 103 Stat. 512; 12 U.S.C. 3332 et seq.] or, if not so required, by an individual or appraisal committee who is independent of the transaction, except no appraisal or formal valuation is required for a real estate loan of one hundred thousand dollars or less. The selected appraiser or appraisal committee shall appraise both the land and the improvements thereon, if any, and shall report to the board of directors or its loan committee, in writing, the results of the appraisal together with any other facts relating to such proposed loan and proposed security as will best enable the board or its loan committee to determine if the loan shall be granted. Such written report must be made a permanent record in the bank's files and must be made available to the commissioner. Any real estate loan made must conform to loan-to-value limits as established by rule by the state banking board under chapter 28-32.

Approved March 13, 1997
Filed March 13, 1997

CHAPTER 82

SENATE BILL NO. 2288

(Senators Tomac, Freborg)
(Representatives Carlson, Froseth, Grumbo)

BANK SERVICE CORPORATION SHAREHOLDERS

AN ACT to amend and reenact section 6-03-49.1 of the North Dakota Century Code, relating to associations of state and national banks becoming shareholders in bank service corporations; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-49.1 of the North Dakota Century Code is amended and reenacted as follows:

6-03-49.1. Bank investment in service corporation - Service corporation services and activities. Subject to the approval of the state banking board, any bank may invest not more than ten percent of paid in and unimpaired capital and unimpaired surplus in stocks, bonds, debentures, or other obligations of any North Dakota corporation organized as a bank service corporation having its principal place of business in the state and operated exclusively for the purpose of providing for such bank and one or more other banks, bank services which the banks would otherwise be required or permitted to provide for on an individual bank basis. The term bank services in this section includes services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed by a bank. Payment for rent earned, goods sold and delivered, or services rendered prior to the making of the payment is not an investment.

A bank service corporation may be chartered under the laws of this state with shareholders limited to state and national banks located within the state and corporations that are organized as associations of state and national banks located within the state to provide all the services, except deposit taking, that all the banks that are its shareholders can offer directly to their own customers at any place in the state where they can offer their services including owning and administering a credit card program for customers of banks and engaging in activities incidental to banking services and other activities that further or facilitate the corporate purposes of a bank or subsidiaries of a bank, so long as such services may be lawfully performed by both its national bank shareholders under the laws of the United States and its state bank shareholders under the laws of this state.

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

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 83**SENATE BILL NO. 2146**

(Senators LaFountain, Nalewaja, C. Nelson)
(Representative Christenson)

BANK SECURITY FOR TRIBAL DEPOSITS

AN ACT to create and enact a new section to chapter 6-03 of the North Dakota Century Code, relating to the power of a state-chartered bank to pledge securities for the repayment of deposits by federally recognized Indian tribes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 6-03 of the North Dakota Century Code is created and enacted as follows:

Pledges of bank securities to secure repayment of deposits by a federally recognized Indian tribe. A bank, upon the deposit with it of funds by a federally recognized Indian tribe, or an officer, employee, or agent thereof in that person's official capacity, may give security for the safekeeping and repayment of the funds deposited by a pledge of securities of the same kind and to the same extent as is authorized by section 21-04-09 in the case of deposits of public funds by public corporations.

Approved March 20, 1997
Filed March 20, 1997

CHAPTER 84

SENATE BILL NO. 2134

(Industry, Business and Labor Committee)

(At the request of the Department of Banking and Financial Institutions)

TRUST COMPANY BONDS AND OATHS

AN ACT to amend and reenact sections 6-05-04 and 6-08-02 of the North Dakota Century Code, relating to approval of trust company surety bond securities and trust company executive officers' oaths of office.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-05-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-05-04. Surety deposit investments required - Securities in which investment may be made. Every corporation organized under this chapter and every foreign corporation before engaging in similar comparable activities within this state shall either deposit with any federal reserve bank, the Bank of North Dakota, or any other custodian approved by the commissioner, securities as provided by this section or pledge a certificate of deposit as provided by this section. The deposit or pledge may not be less than fifty thousand dollars or less than one-sixth of the par value of the capital stock of the corporation, whichever is the greater. However, ~~ne~~ a corporation is not required to deposit or pledge more than five hundred thousand dollars. The deposit certificate or pledge agreement must authorize the commissioner to cause ~~such~~ the deposit, in part or in whole, to be transferred to the commissioner upon the commissioner's demand. An original of the deposit certificate or pledge must be furnished to the commissioner. The deposit or pledge must be:

1. Bonds of the United States or of this state;
2. Bonds of other states which have the approval of the ~~state auditor and the~~ commissioner of banking and financial institutions;
3. Bonds or obligations of any township, school district, city, or county within this state, whose total bonded indebtedness does not exceed five percent of the then assessed valuation thereof;
4. Bonds or promissory notes secured by first mortgages or deeds of trust upon unencumbered real estate situated within the state of North Dakota worth two and one-half times the amount of the obligation so secured;
5. Obligations issued, assumed, or guaranteed by the International Bank for Reconstruction and Development or the African Development Bank;
6. United States treasury bills or notes of an agency thereof;
7. Certificates of deposit fully insured by the federal deposit insurance corporation from banks located within this state; or

8. Certificates of deposit issued by the Bank of North Dakota.

SECTION 2. AMENDMENT. Section 6-08-02 of the North Dakota Century Code is amended and reenacted as follows:

6-08-02. Oath of officers - Form and filing. Every active officer of any state banking association or trust company organized under this title, before entering upon the duties of ~~his~~ the office, shall take and subscribe an oath that ~~he~~ the officer will administer the affairs of ~~such~~ the association or trust company diligently and honestly, so far as the duty devolves upon ~~him~~ the officer, and that ~~he~~ the officer will not violate knowingly, nor willingly permit to be violated, any of the provisions of this title. All ~~such~~ oaths must be presented to the board of directors and a synopsis thereof recorded in the board's record and then filed with the ~~state banking~~ board.

Approved March 21, 1997

Filed March 21, 1997

CHAPTER 85**HOUSE BILL NO. 1098**
(Representative Keiser)**CREDIT UNION MEMBERSHIP**

AN ACT to amend and reenact section 6-06-07 of the North Dakota Century Code, relating to fields of membership for credit unions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-06-07 of the North Dakota Century Code is amended and reenacted as follows:

6-06-07. Membership in credit union. The membership of a credit union consists of the incorporators and such other persons as may be elected to membership. Each member shall subscribe to and pay the initial installment on at least one share in the credit union, and pay the entrance fee as provided by the bylaws of the credit union. Organizations, incorporated or otherwise, composed principally of the same general group as the credit union membership may be members therein. Credit union membership is limited to groups having a common bond of occupation or association or to groups within a well-defined rural or urban district. The board shall adopt a procedure whereby all interested persons are afforded reasonable opportunity to submit data, views, or arguments, orally or in writing, concerning a proposed application for a credit union to expand its field of membership.

Approved April 8, 1997
Filed April 8, 1997

CHAPTER 86

SENATE BILL NO. 2129

(Industry, Business and Labor Committee)

(At the request of the Department of Banking and Financial Institutions)

CREDIT UNION EXAMINATIONS, AUDITS, AND BORROWING

AN ACT to amend and reenact subsection 2 of section 6-06-08, sections 6-06-15, and 6-06-19 of the North Dakota Century Code, relating to credit union examinations, credit union supervisory committee audits, and borrowing of money by credit unions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁷ **SECTION 1. AMENDMENT.** Subsection 2 of section 6-06-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Credit unions must be examined at least once each twenty-four months by the commissioner; ~~or with the commissioner's approval and the approval of the state credit union board, credit unions may be examined annually by a certified public accountant or the North Dakota credit union league.~~ In lieu of the examinations herein required, the commissioner may accept any examination made or obtained by the national credit union administration, and may in ~~his or her~~ the commissioner's discretion conduct a joint examination with ~~said federal agency the national credit union administration.~~ If the examination is not made by the commissioner, the expense of such examination must be borne by the credit union examined and such examination must be in such form and contain such information as the commissioner may require. Two copies of such examination must be filed with the commissioner within thirty days after completion of the examination and must be approved by the commissioner.

SECTION 2. AMENDMENT. Section 6-06-15 of the North Dakota Century Code is amended and reenacted as follows:

6-06-15. Duties and powers of supervisory committee. The supervisory committee, by a majority vote, may call a special meeting of the members of the credit union to consider any matter which it wishes to submit to the membership. ~~‡~~ The supervisory committee shall:

1. Fill vacancies in ~~its~~ the committee's own membership.
2. Make an examination of the affairs of the credit union, including an audit of ~~its~~ the credit union's books, at least annually, and ~~it~~ the

⁷ Section 6-06-08 was also amended by section 12 of House Bill No. 1060, chapter 78.

committee may submit such report to the members of the credit union at a meeting called for that purpose by the committee whenever ~~it~~ the committee deems such action necessary.

3. Make an annual audit and report and submit ~~it~~ the audit and report at the annual meeting of the credit union.
4. Suspend any officer, director, or member of any committee when by unanimous, not including the person who is being considered for suspension, vote of the committee, such action is determined to be necessary to the proper conduct of the credit union, but upon taking such action, the committee shall call the members of the credit union together immediately to act on ~~such~~ the suspension, and the members at ~~such~~ the meeting may sustain the suspension and remove ~~such~~ the officer permanently or may reinstate ~~him~~ the officer, director, or committee member.
5. The commissioner may reject a supervisory committee examination or audit if the examination or audit is determined to be unsatisfactory.

If the bylaws do not provide for the election or appointment of a supervisory committee, the duties and powers described above are the responsibility of and delegated to the board of directors.

⁸ **SECTION 3. AMENDMENT.** Section 6-06-19 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-06-19. Authority to borrow - Limitation - Exception. A credit union may borrow money from any source, but the total borrowings may not exceed twenty-five percent of ~~its~~ the credit union's assets unless the commissioner authorizes a larger amount. The state credit union board, in the exercise of its discretion, may suspend or restrict the borrowing powers of a credit union. The limitation on borrowing does not apply to a corporate central credit union which is limited to borrowing up to five times ~~its~~ the corporate central credit union's capital, surplus, and reserve fund. For ~~the~~ purposes of this section, capital, surplus, and reserve fund for a corporate central credit union includes statutory or regulatory reserves, reserves established for contingencies or any other purposes, undivided earnings, all sums on deposit by other credit unions which are permanent capital base funds as defined by the bylaws of the corporate central credit union, or any other funds being held by the corporate central credit union for the purpose of maintaining a capital base. A credit union must provide within one week written notification to the commissioner of the amount, terms, and source of all borrowings under this section. Written notification is not required if the borrowings are provided by the corporate central credit union and that information is available to the commissioner through electronic inquiry.

Approved March 19, 1997
Filed March 19, 1997

⁸ Section 6-06-19 was also amended by section 13 of House Bill No. 1060, chapter 78.

CHAPTER 87**SENATE BILL NO. 2169**

(Senator Lips)

CREDIT UNION VOLUNTEER IMMUNITY

AN ACT to create and enact a new section to chapter 6-06 of the North Dakota Century Code, relating to immunity of credit union volunteers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 6-06 of the North Dakota Century Code is created and enacted as follows:

Credit union volunteers - Immunity. A person who serves as a volunteer, including a director, credit committee member, or supervisory committee member, of a federal or state chartered credit union is immune from civil liability for any act or omission resulting in damage or injury if at the time of the act or omission all of the following are met:

1. The volunteer was acting in good faith and in the scope of that person's official duties as a volunteer of the credit union.
2. The act or omission did not constitute willful misconduct or gross negligence on the part of the volunteer.
3. The volunteer did not receive or expect to receive reimbursement for or payment of expenses in excess of two thousand dollars per year for expenses actually incurred as a result of providing services as a volunteer of the credit union and did not receive or expect to receive compensation or anything in lieu of compensation as payment for services provided as a volunteer of the credit union.

This section does not grant immunity to any person causing damage as the result of the negligent operation of a motor vehicle.

Approved March 19, 1997

Filed March 19, 1997

CHAPTER 88**HOUSE BILL NO. 1336**

(Representatives Price, Schmidt)
(Senators Krebsbach, Lindaas, Tomac)

CREDIT UNION DIRECTOR BORROWING LIMIT

AN ACT to amend and reenact section 6-06-20 of the North Dakota Century Code, relating to the amount that may be borrowed by a director or member of a credit union.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-06-20 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-06-20. Borrowings of directors and committee members limited - Repayment of loans. ~~No~~ A director or member of any committee may not borrow from the credit union in which the director or member holds office more than ~~ten~~ twenty thousand dollars plus pledged shares and deposits less any loan balance therein, unless the application is approved by three-fourths of the other members of the board of directors. The director or member may guarantee or endorse paper for other borrowers. A borrower may repay the borrower's loan in whole or in part on any day that the office of the credit union is open for business.

Approved March 13, 1997
Filed March 13, 1997

CHAPTER 89

HOUSE BILL NO. 1223

(Representatives Keiser, Axtman, Skarphol)
(Senators Klein, Mutch)

NSF INSTRUMENT RETURNS AND COLLECTIONS

AN ACT to create and enact a new section to chapter 6-08 of the North Dakota Century Code, relating to the return of instruments issued without sufficient funds; and to amend and reenact sections 6-08-16 and 6-08-16.2 of the North Dakota Century Code, relating to collection on instruments issued without sufficient funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁹ **SECTION 1. AMENDMENT.** Section 6-08-16 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-08-16. Issuing check or draft without sufficient funds or credit - Notice - Time limitation - Financial liability - Penalty.

1. A person may not, for ~~himself~~ oneself, as the agent or representative of another, or as an officer or member of a firm, company, copartnership, or corporation make, draw, utter, or deliver any check, draft, or order for the payment of money upon a bank, banker, or depository, if at the time of ~~such~~ the making, drawing, uttering, or delivery, or at the time of presentation for payment if the presentation for payment is made within fourteen days after the original delivery thereof, there are not sufficient funds in or credit with the bank, banker, or depository to meet the check, draft, or order in full upon its presentation. Violation of this subsection is a class B misdemeanor.
2. The person is also liable for collection fees or costs, not in excess of ~~fifteen~~ twenty dollars, which are recoverable by civil action by the holder, or its agent or representative, of the check, draft, or order. A collection agency shall reimburse the original holder of the check, draft, or order any additional charges assessed by the depository bank of the check, draft, or order not in excess of two dollars if recovered by the collection agency. A civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the check, draft, or order. The civil penalty consists of payment to the holder, or its agent or representative, of the instrument of the lesser of one hundred dollars or three times the amount of the instrument.
3. The word "credit" as used in this section means an arrangement or understanding with the bank, banker, or depository for the payment of the check, draft, or order. The making of a postdated check knowingly

⁹ Section 6-08-16 was also amended by section 1 of House Bill No. 1238, chapter 90.

received as such, or of a check issued under an agreement with the payee that the check would not be presented for payment for a time specified, does not violate this section.

4. A notice of dishonor may be mailed by the holder, or its agent or representative, of the check upon dishonor. Proof of mailing may be made by return receipt or by an affidavit of mailing signed by the individual making the mailing. The notice must be in substantially the following form:

Notice of Dishonored Check

Date _____

Name of Issuer _____

Street Address _____

City and State _____

You are according to law ~~hereby~~ notified that a check dated _____, 19____, drawn on the _____ Bank of _____ in the amount of _____ has been returned unpaid with the notation the payment has been refused because of nonsufficient funds. Within ten days from the receipt of this notice, you must pay or tender to

(Holder or Agent or Representative)

sufficient moneys to pay such instrument in full and any collection fees or costs not in excess of ~~fifteen~~ twenty dollars.

The notice ~~may~~ of dishonor also may contain a recital of the penal provisions of this section and the possibility of a civil action to recover any collection fees or costs or civil penalty authorized by this section.

5. An agent acting for the receiver of a check in violation of this section may present the check to the state's attorney for prosecution. The criminal complaint for the offense of issuing a check, draft, or money order without sufficient funds under this section must be executed within not more than ninety days after the dishonor by the drawee of said instrument for nonsufficient funds. The failure to execute a complaint within said time bars the criminal charge under this section.

¹⁰ **SECTION 2. AMENDMENT.** Section 6-08-16.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-08-16.2. Issuing check without account or with insufficient funds - Financial liability - Penalty - Exceptions.

¹⁰ Section 6-08-16.2 was also amended by section 2 of House Bill No. 1238, chapter 90.

1. As used in this section:
 - a. "Account" means any account at a bank or depository from which an instrument could legally be paid.
 - b. "Dishonor" is synonymous with "nonpayment".
 - c. "Instrument" means any check, draft, or order for the payment of money.
 - d. "Issues" means draws, utters, or delivers.
2. A person who, for that person or as agent or representative of another, willfully as defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if that person has been previously convicted of issuing an instrument without an account pursuant to section 6-08-16.1 or without sufficient funds in a bank or depository pursuant to section 6-08-16, and:
 - a. At the time of issuing the instrument the drawer does not have an account with the bank or depository on which the instrument is drawn; or
 - b. At the time of issuing the instrument or at the time of presentation for payment if made within five business days after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation.

The person ~~is~~ also is liable for collection fees or costs, not in excess of ~~fifteen~~ twenty dollars, which are recoverable by civil action by the holder, or its agent or representative, of the instrument.

3. A person who, for that person or an agent or representative of another, willfully as defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if the instrument was for at least ten thousand dollars, and:
 - a. At the time of issuing the instrument, the drawer does not have an account with the bank or depository on which the instrument is drawn; or
 - b. At the time of issuing the instrument, or at the time of presentation for payment if made within five business days after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation.

The person ~~is~~ also is liable for collection fees or costs, not in excess of ~~fifteen~~ twenty dollars, which are recoverable by civil action by the holder, or its agent or representative, of the instrument.

4. A civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the instrument. The civil penalty consists of payment to the holder of the instrument of the lesser of one hundred dollars or three times the amount of the instrument.

5. An agent acting for the receiver of an instrument issued in violation of this section may present the instrument to the state's attorney for prosecution. A criminal complaint for violation of subdivision b of subsection 2 or subdivision b of subsection 3 must be executed within ninety days after the drawer of the instrument receives notice, from the holder, or its agent or representative, of nonpayment. Failure to execute a complaint within the time set forth in this subsection bars any criminal charges under subdivision b of subsection 2 or subdivision b of subsection 3.
6. A notice of dishonor may be mailed by the holder, or its agent or representative, of the instrument upon dishonor. Proof of mailing may be made by return receipt or by an affidavit of mailing signed by the individual making the mailing. The notice must be in substantially the following form:

Notice of Dishonored Instrument

Date _____

Name of Issuer _____

Street Address _____

City and State _____

You are according to law ~~hereby~~ notified that an instrument dated _____, 19____, drawn on the _____ Bank of _____ in the amount of _____ has been returned unpaid with the notation the payment has been refused because (of nonsufficient funds) (the drawer does not have an account). Within ten days from the receipt of this notice, you must pay or tender to _____
(Holder or Agent or Representative)

sufficient moneys to pay such instrument in full and any collection fees or costs not in excess of ~~fifteen~~ twenty dollars.

The notice may also contain a recital of the penal provisions of this section and the possibility of a civil action to recover any collection fees or costs authorized by this section.

SECTION 3. A new section to chapter 6-08 of the North Dakota Century Code is created and enacted as follows:

Return of paid checks to the issuer. When the holder, or its agent or representative, of a check receives full payment for the amount of a check issued without sufficient funds or credit, or without account, the check must be returned to the issuer upon the payment of any civil penalty assessed if the issuer appears and requests the return of the check or the issuer furnishes a self-addressed stamped envelope.

Approved March 25, 1997
Filed March 26, 1997

CHAPTER 90

HOUSE BILL NO. 1238

(Representatives Olson, Mahoney)
(Senator Sand)

NO ACCOUNT AND NSF CHECKS

AN ACT to amend and reenact subsection 1 of section 6-08-16 and section 6-08-16.2 of the North Dakota Century Code, relating to issuing a check without an account or without sufficient funds; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹ **SECTION 1. AMENDMENT.** Subsection 1 of section 6-08-16 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A person may not, for ~~himself~~ that person, as the agent or representative of another, or as an officer or member of a firm, company, copartnership, or corporation make, draw, utter, or deliver any check, draft, or order for the payment of money upon a bank, banker, or depository, if at the time of such making, drawing, uttering, or delivery, or at the time of presentation for payment if the presentation for payment is made within fourteen days after the original delivery thereof, there are not sufficient funds in or credit with the bank, banker, or depository to meet the check, draft, or order in full upon its presentation. Violation of this subsection is an infraction if the amount of insufficient funds or credit is not more than one hundred dollars, a class B misdemeanor if the amount of insufficient funds or credit is more than one hundred dollars and not more than five hundred dollars, and a class A misdemeanor if the amount of insufficient funds or credit is more than five hundred dollars.

¹² **SECTION 2. AMENDMENT.** Section 6-08-16.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-08-16.2. Issuing check without account or with insufficient funds - Financial liability - Penalty - Exceptions.

1. As used in this section:
 - a. "Account" means any account at a bank or depository from which an instrument could legally be paid.
 - b. "Dishonor" is synonymous with "nonpayment".

¹¹ Section 6-08-16 was also amended by section 1 of House Bill No. 1223, chapter 89.

¹² Section 6-08-16.2 was also amended by section 2 of House Bill No. 1223, chapter 89.

- c. "Instrument" means any check, draft, or order for the payment of money.
 - d. "Issues" means draws, utters, or delivers.
 2. A person who, for that person or as agent or representative of another, willfully as defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if that person has been previously convicted of issuing an instrument without an account pursuant to section 6-08-16.1 or without sufficient funds in a bank or depository pursuant to section 6-08-16, and:
 - a. At the time of issuing the instrument the drawer does not have an account with the bank or depository on which the instrument is drawn; or
 - b. At the time of issuing the instrument or at the time of presentation for payment if made within ~~five~~ ten business days after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation.

The person is also liable for collection fees or costs, not in excess of ~~fifteen~~ twenty dollars, which are recoverable by civil action by the holder of the instrument.

3. A person who, for that person or an agent or representative of another, willfully as defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if the instrument was for at least ten thousand dollars, and:
 - a. At the time of issuing the instrument, the drawer does not have an account with the bank or depository on which the instrument is drawn; or
 - b. At the time of issuing the instrument, or at the time of presentation for payment if made within five business days after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation.

The person is also liable for collection fees or costs, not in excess of ~~fifteen~~ twenty dollars, which are recoverable by civil action by the holder of the instrument.

4. A person who, for that person or as an agent or representative of another, willfully issues at least two instruments within a ninety-day period is guilty of a class C felony if the total amount of the instruments was for at least five hundred dollars, and the drawer has violated subdivision a or b, or both, with respect to the instruments:
 - a. At the time of issuing the instruments, the drawer does not have an account with the bank or depository on which the instruments are drawn; or

b. At the time of issuing the instruments, or at the time of presentation for payment if made within ten business days after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation.

The person is also liable for collection fees or costs, not in excess of twenty dollars per instrument, which are recoverable by civil action by the holder of the instrument, or the holder's agent or representative.

5. A civil penalty is also recoverable by civil action by the holder of the instrument. The civil penalty consists of payment to the holder of the instrument of the lesser of one hundred dollars or three times the amount of the instrument.
5. 6. An agent acting for the receiver of an instrument issued in violation of this section may present the instrument to the state's attorney for prosecution. A criminal complaint for violation of subdivision b of subsection 2 or subdivision b of subsection 3 must be executed within ninety days after the drawer of the instrument receives notice, from the holder, of nonpayment. A complaint for a violation of subsection 4 must be executed within ninety days after the drawer of the instrument receives notice, from the holder, of the holder's agent or representative, of nonpayment for the last instrument, if any, included under subdivision b of subsection 4 for a violation of subsection 4. Failure to execute a complaint within the time set forth in this subsection bars any criminal charges under subdivision b of subsection 2 ~~or~~, subdivision b of subsection 3, or subdivision b of subsection 4.
6. 7. A notice of dishonor may be mailed by the holder of the instrument upon dishonor. Proof of mailing may be made by return receipt or by an affidavit of mailing signed by the individual making the mailing. The notice must be in substantially the following form:

Notice of Dishonored Instrument

Date _____
 Name of Issuer _____
 Street Address _____
 City and State _____

You are according to law hereby notified that an instrument dated _____, 19____, drawn on the _____ Bank of _____ in the amount of _____ has been returned unpaid with the notation the payment has been refused because (of nonsufficient funds) (the drawer does not have an account). Within ten days from the receipt of this notice, you must pay or tender to _____

(Holder)

sufficient moneys to pay such instrument in full and any collection fees or costs not in excess of ~~fifteen~~ twenty dollars.

The notice may also contain a recital of the penal provisions of this section and the possibility of a civil action to recover any collection fees or costs authorized by this section.

Approved April 9, 1997
Filed April 10, 1997

CHAPTER 91**HOUSE BILL NO. 1463**

(Representatives Poolman, Delmore, Glassheim, Jensen)
(Senator Krebsbach)

**FINANCIAL INSTITUTION CUSTOMER INFORMATION
EXCHANGE**

AN ACT to create and enact a new subsection to section 6-08.1-02 of the North Dakota Century Code, relating to the exchange of customer information between affiliated financial institutions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 6-08.1-02 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

The disclosure by a financial institution to any financial institution or other entity that controls, is controlled by, or is under common control with the financial institution if the financial institution or other entity receiving the information complies with section 6-08.1-03.

Approved March 25, 1997
Filed March 26, 1997

CHAPTER 92**SENATE BILL NO. 2261**
(Senator Mutch)**BANK ACQUISITIONS**

AN ACT to amend and reenact sections 6-08.3-02.1 and 6-08.3-13 of the North Dakota Century Code, relating to the acquisition of a North Dakota state-chartered or national bank by an out-of-state bank holding company and interstate banking authorization; and to repeal section 6-08.3-04 of the North Dakota Century Code, relating to the formation of a state-chartered bank by an out-of-state bank holding company.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-08.3-02.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-08.3-02.1. Application to acquire a state-chartered or national bank. An out-of-state bank holding company may acquire a North Dakota state-chartered or national bank pursuant to the approval process applicable for in-state acquisitions and under the conditions of this chapter. An out-of-state bank holding company shall provide notice to the board at the time an application or notice is filed with the applicable federal regulatory agency to acquire a North Dakota bank. Notwithstanding any provision to the contrary in this title, an out-of-state holding company that owned a depository institution as defined in section 6-08.3-01, the main office of which was located in this state on January 1, 1997, may reorganize that depository institution's North Dakota operations as a newly chartered state or national bank in this state.

SECTION 2. AMENDMENT. Section 6-08.3-13 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-08.3-13. Interstate banking authorization. This chapter specifically authorizes, in accordance with section 3 of the Bank Holding Company Act of 1956 [12 U.S.C. 1842], and section 101 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 [Pub. L. 103-328; 108 Stat. 2338; 12 U.S.C. 1811 et seq.], interstate banking in this state. However, to the extent a state imposes a restriction on the ability of a North Dakota bank holding company to acquire a bank in that state and the restriction is based on the length of time either bank has existed, that restriction must apply to any acquisition of a North Dakota bank by a bank holding company located in that state.

SECTION 3. REPEAL. Section 6-08.3-04 of the 1995 Supplement to the North Dakota Century Code is repealed.

Approved March 26, 1997
Filed March 26, 1997

CHAPTER 93

SENATE BILL NO. 2069

(Appropriations Committee)

(At the request of the Bank of North Dakota)

INTEREST ON STUDENT LOANS

AN ACT to amend and reenact subdivision e of subsection 1 of section 6-09-15 and section 15-62.1-03 of the North Dakota Century Code, relating to interest provisions in guaranteed student loan agreements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³ **SECTION 1. AMENDMENT.** Subdivision e of subsection 1 of section 6-09-15 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- e. That are eligible to be guaranteed under chapter 15-62.1. Loans made pursuant to this subdivision may provide for interest that remains unpaid at the end of any period specified in the loan to be added to the principal amount of the debt and thereafter accumulate interest.

SECTION 2. AMENDMENT. Section 15-62.1-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-62.1-03. Rates of interest permissible for guaranteed loans. All loans guaranteed by the agency and coinsured by the federal government must bear interest at rates which are no greater than those provided under the federally coinsured loan programs. In the event that the agency guarantees student loans without federal coinsurance pursuant to section 15-62.1-02, ~~such loans must bear interest at rates which are no greater than~~ the interest rate on such loans may not be more than two percentage points above the base participation rate as established by the Bank of North Dakota; plus no more than two percentage points, which is in effect on the date the loan is made. Any prohibition on the capitalization of interest does not apply to loans guaranteed under this chapter. A loan guaranteed under this chapter may provide for interest which remains unpaid at the end of any period specified in the loan to be added to the principal amount of the debt and thereafter accumulate interest.

Approved March 10, 1997
Filed March 10, 1997

¹³ Section 6-09-15 was also amended by section 1 of House Bill No. 1155, chapter 94, and section 2 of House Bill No. 1155, chapter 94.

CHAPTER 94

HOUSE BILL NO. 1155

(Government and Veterans Affairs Committee)
(At the request of the Industrial Commission)

FEDERAL LEGISLATION REFERENCE UPDATES

AN ACT to amend and reenact subdivisions h and i of subsection 1 of section 6-09-15, subsection 2 of section 6-09-15, sections 6-09.5-01, 6-09.5-04, 6-09.5-08, 6-09.5-10, subsection 1 of section 15-62.1-02, sections 54-17-22, 54-17-25, and 54-17-33 of the North Dakota Century Code, relating to updates in federal legislation referenced in statutes authorizing industrial commission agency programs administered by the Bank of North Dakota, student loans of North Dakota and the student loan trust, and the industrial commission when acting as the state planning agency for the development of Riverdale and when acting as the agricultural mortgage marketing facility for the secondary market program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁴ **SECTION 1. AMENDMENT.** Subdivisions h and i of subsection 1 of section 6-09-15 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- h. Under Public Law No. 99-198 [99 Stat. 1534₇; 7 U.S.C. 1932 et seq.], as amended through December 31, 1996, to nonprofit corporations for the purpose of relending loan funds to rural businesses.
- i. Under title 7, Code of Federal Regulations, part 1948, subpart C; part 1951, subparts F and R; and part 1955, subparts A, B, and C, as amended through December 31, 1996, to finance businesses and community development projects in rural areas.

¹⁵ **SECTION 2. AMENDMENT.** Subsection 2 of section 6-09-15 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Make agricultural real estate loans in order to participate in the agricultural mortgage secondary market program established pursuant to the Agricultural Credit Act [Pub. L. 100-233₇; 101 Stat. 1686₇; 12 U.S.C. ~~2279aa-2279aa~~ 2279aa-14], as amended through December 31, 1996.

SECTION 3. AMENDMENT. Section 6-09.5-01 of the North Dakota Century Code is amended and reenacted as follows:

¹⁴ Section 6-09-15 was also amended by section 1 of Senate Bill No. 2069, chapter 93, and section 2 of House Bill No. 1155, chapter 94.

¹⁵ Section 6-09-15 was also amended by section 1 of Senate Bill No. 2069, chapter 93, and section 1 of House Bill No. 1155, chapter 94.

6-09.5-01. Community Water Facility Loan Act - Intent. Moneys transferred under this chapter shall be used primarily for supplementary financing in conjunction with federal moneys available under the authority of 7 U.S.C. 1926 and 1927 [Pub. L. 87-128; 75 Stat. 308], as amended through December 31, 1996, and the rules and regulations promulgated thereunder for the construction, enlargement, extension, or other improvement of community water facilities. This chapter is intended to improve the health, general welfare, convenience, and prosperity of communities and rural inhabitants presently lacking adequate water supplies.

SECTION 4. AMENDMENT. Section 6-09.5-04 of the North Dakota Century Code is amended and reenacted as follows:

6-09.5-04. Loan applications - Approval. Applications for revolving fund must be submitted to the Bank of North Dakota which shall investigate and consider approval of loan applications under such rules and regulations as it may establish. The Bank shall cooperate with the state office of the farmers home administration or its successor in considering applications to comply with the requirements of 7 U.S.C. 1926 and 1927 [Pub. L. 87-128; 75 Stat. 308], as amended through December 31, 1996, and the rules and regulations promulgated thereunder relating to community water facilities.

SECTION 5. AMENDMENT. Section 6-09.5-08 of the North Dakota Century Code is amended and reenacted as follows:

6-09.5-08. Loan eligibility. Applicants eligible for loans shall include cities eligible under 7 U.S.C. 1926 [Pub. L. 87-128; 75 Stat. 308], as amended through December 31, 1996, and associations, cooperatives, and corporations operated on a nonprofit basis which have the legal authority necessary for constructing, operating, and maintaining the proposed facility or service and for obtaining, giving security for, and repaying the loan in accordance with farmers home administration requirements. Applicant cities, associations, cooperatives, and corporations shall seek to include cities and rural areas, eligible under farmers home administration rules and regulations and located near a proposed service area, as part of a water facility project. Reasons for not including such cities and rural areas must be approved jointly by the Bank of North Dakota and the farmers home administration.

SECTION 6. AMENDMENT. Section 6-09.5-10 of the North Dakota Century Code is amended and reenacted as follows:

6-09.5-10. Rules and regulations. The Bank of North Dakota may promulgate and adopt such rules ~~and regulations in accordance with chapter 28-32~~ as are necessary to carry out the provisions of this chapter and meet the requirements of 7 U.S.C. 1926 and 1927 [Pub. L. 87-128; 75 Stat. 308], as amended through December 31, 1996, and the rules and regulations promulgated thereunder relating to community water facilities.

SECTION 7. AMENDMENT. Subsection 1 of section 15-62.1-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. To guarantee all loans which satisfy the requirements set forth in title IV, part B, of the Higher Education Act of 1965 [20 U.S.C. 1001 et seq.; Pub. L. 89-329; 79 Stat. 1236; Pub. L. 99-498; 100 Stat. 1353], as amended through December 31, 1996, upon terms, conditions, and application procedures commensurate with the federal Higher Education

Act of 1965 [20 U.S.C. 1001 et seq.; Pub. L. 89-329; 79 Stat. 1236; Pub. L. 99-498; 100 Stat. 1353], as amended through December 31, 1996, if federal coinsurance of student loans guaranteed by the agency is available. If at any time the agency determines that student loans made under the terms and conditions of federal coinsurance programs are no longer adequately serving the needs of North Dakota students attending postsecondary institutions, or if federal coinsurance is no longer available, the agency shall notify the industrial commission or its designee. Upon approval of the industrial commission or its designee, the agency shall guarantee student loans without federal coinsurance pursuant to rules made by the agency relating to terms for applicant eligibility in accordance with the provisions of this chapter. If loans are guaranteed without federal coinsurance, the agency may not adopt eligibility requirements or loan limits for student loans to qualify for guarantee by the agency which are more restrictive than those eligibility requirements or loan limits existent as of the date the industrial commission approves the guarantee of loans without federal coinsurance or the date of the termination of programs providing for federal coinsurance of loans guaranteed by the agency. Students whose loans are guaranteed by the agency must be students who have been accepted for enrollment or are attending eligible postsecondary institutions located within or without this state, and whose loans are for the purpose of assisting them in meeting their expenses of postsecondary education. Students who are accepted for enrollment or are attending eligible proprietary or postsecondary institutions of higher education on at least a half-time basis, as determined by the institutions, are eligible to have loans guaranteed by the agency. The agency shall, by rule, establish minimum qualifications for a person to be deemed a part-time student for purposes of this chapter.

SECTION 8. AMENDMENT. Section 54-17-22 of the North Dakota Century Code is amended and reenacted as follows:

54-17-22. Commission authorized to act as planning agency of state and to negotiate and contract with federal housing administration. For the purposes of sections 54-17-21 through 54-17-23, the industrial commission is hereby designated as the state planning agency, and is authorized to negotiate and contract with the federal housing and home finance administrator, under the provisions of the Housing Act of 1954 [Pub. L. 83-560; 68 Stat. 590; 12 U.S.C. 1703, et seq.], and all acts amendatory thereof and supplementary thereto through December 31, 1996, in all matters pertaining to or affecting planning work for the development and construction of public works in the community of Riverdale, when acquired. The plan of the commission for any improvement or development in Riverdale must be considered as the approved plan or plans therefor of the state of North Dakota.

¹⁶ **SECTION 9. AMENDMENT.** Section 54-17-25 of the North Dakota Century Code is amended and reenacted as follows:

54-17-25. Bonds authorized - Establishment of secondary market program. Whenever the industrial commission decides that it is in the public interest to

¹⁶ Section 54-17-25 was also amended by section 2 of Senate Bill No. 2111, chapter 448.

diminish the investment of state funds in United States government guaranteed or reinsured or North Dakota guaranteed student loans, that it will be difficult to divest the state of appreciable amounts of such loans by piecemeal offering to the investing and saving public, that business conditions are favorable to a state-sponsored program to consolidate state-held student loans, and to enlarge private participation in such loans, the commission may by plenary resolution duly adopted in accordance with the provisions hereof authorize preparation, sale, and issuance of revenue bonds of North Dakota in such amounts and at such times and in such form, which may include the issuance of bonds the interest income on which is subject to federal income taxes, as the commission shall determine to be for the public good. The bonds shall be a paramount charge upon a sufficient designated portion of the resources of the student loan trusts, subject only to necessary administrative expenses of the trusts duly appropriated out of the interest earning resources thereof. The bonds may bear such rate or rates of interest as the commission may provide. The bonds must have all of the qualities and incidents of negotiable paper and are not subject to taxation by the state of North Dakota or by any county, municipality, or political subdivision therein. The bonds must be payable solely out of the separate resources generated respectively from collection of payments on and earnings and proceeds of (1) United States government guaranteed or reinsured or (2) North Dakota guaranteed student loans, and must respectively so recite. They are not indebtedness of the state of North Dakota or of any agency, board, department, or officer or agent thereof. Without limiting the foregoing, the commission may request the organization of a nonprofit corporation meeting the requirements of the Internal Revenue Code of 1954, as amended and redesignated as the Internal Revenue Code of 1986 [Pub. L. 99-54], and as it may be amended from time to time, and enter into one or more agreements with such corporation providing for the establishment of a secondary market program in the state of North Dakota for the acquisition by the corporation of such loans made pursuant to title IV, part B of the Higher Education Act of 1965 [Pub. L. 89-329; 79 Stat. 1236; Pub. L. 99-498; 100 Stat. 1353; 20 U.S.C. 1001 et seq.], as amended through December 31, 1996, as the commission shall, in its discretion, deem advisable.

SECTION 10. AMENDMENT. Section 54-17-33 of the North Dakota Century Code is amended and reenacted as follows:

54-17-33. State trust created - Agricultural mortgage secondary market. The industrial commission may establish a trust for the purpose of participating as an agricultural mortgage marketing facility in the agricultural mortgage secondary market program established pursuant to the Agricultural Credit Act [Pub. L. 100-233; 101 Stat. 1686; 12 U.S.C. 2279aa-2279aa-14], as amended through December 31, 1996. The industrial commission may take any action necessary to qualify as a certified facility.

Approved March 5, 1997
Filed March 6, 1997

CHAPTER 95

HOUSE BILL NO. 1066

(Legislative Council)
(Legislative Audit and Fiscal Review Committee)
(Representatives Dorso, Wald, Timm)
(Senators Mutch, Tallackson)

BANK OF NORTH DAKOTA AUDIT

AN ACT to amend and reenact section 6-09-29 of the North Dakota Century Code, relating to the audit of the Bank of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09-29 of the North Dakota Century Code is amended and reenacted as follows:

6-09-29. Department of banking and financial institutions and the industrial commission responsible for examinations Examinations and audit reports. The industrial commission is responsible for ~~contracting with a nongovernment certified public accounting firm to annually audit~~ state auditor shall contract with an independent certified public accounting firm for an annual audit of the Bank of North Dakota in accordance with generally accepted government auditing standards; which must include inspection and verification of the assets in its possession and under its control with sufficient thoroughness to ascertain with reasonable certainty whether the valuations are carried correctly on its books. The state auditor shall audit annually or contract for an annual audit of the separate programs and funds administered by the Bank of North Dakota. On request of the state auditor, the industrial commission shall assist the state auditor in the auditing firm selection process, but the selection of the auditing firm is the state auditor's responsibility. The auditor selected shall prepare an audit report that includes financial statements presented in accordance with the audit and accounting guide for banks and savings institutions issued by the American institute of certified public accountants. The auditor also shall prepare audited financial statements for inclusion in the comprehensive annual financial report for the state. The state auditor may conduct performance audits of the Bank of North Dakota, including the separate programs and funds administered by the Bank. The auditor so hired shall audit the Bank's methods of operation and accounting, shall report the results of the audit to the industrial commission as soon as practicable, and shall furnish one copy and to the legislative assembly. The Bank of North Dakota or its separate programs and funds shall pay the costs of such the audit must be paid for by the Bank of North Dakota. The department of banking and financial institutions, through the commissioner, is responsible for performing an examination of shall examine the Bank of North Dakota at least once each twenty-four months and for conduct any investigation of the Bank which may be necessary. The commissioner shall report the examination results, and the results of any necessary investigation, must be reported to the industrial commission as soon as practicable and to the legislative assembly. Fees for such examinations must be charged by the The department of banking and financial institutions shall charge a fee for any

examination or investigation at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examinations and investigations provided for by this section.

Approved January 31, 1997

Filed January 31, 1997

CHAPTER 96

SENATE BILL NO. 2087

(Political Subdivisions Committee)

(At the request of the North Dakota Municipal Bond Bank)

MUNICIPAL BOND BANK DEBT SERVICE RESERVE

AN ACT to amend and reenact subsection 1 of section 6-09.4-10 of the North Dakota Century Code, relating to the required debt service reserve of the municipal bond bank; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 6-09.4-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The bond bank shall establish and maintain a reserve fund in which there must be deposited all moneys appropriated by the state for the purpose of ~~such~~ the fund, all proceeds of bonds required to be deposited therein by terms of any contract between the bond bank and its bondholders or any resolution of the bond bank with respect to ~~such~~ the proceeds of bonds, any other moneys or funds of the bond bank which it determines to deposit therein, any contractual right to the receipt of moneys by the bond bank for the purpose of the fund, including a letter of credit or similar instrument, and any other moneys made available to the bond bank only for the purposes of ~~such~~ the fund from any other source or sources. Moneys in the reserve fund must be held and applied solely to the payment of the interest on and the principal of bonds and sinking fund payments as the same become due and payable and for the retirement of bonds, including payment of any redemption premium required to be paid when any bonds are redeemed or retired prior to maturity. Moneys in the reserve fund may not be withdrawn therefrom if ~~such~~ the withdrawal would reduce the amount in the reserve fund to an amount less than the required debt service reserve, except for payment of interest then due and payable on bonds and the principal of bonds then maturing and payable and sinking fund payments and for the retirement of bonds in accordance with the terms of any contract between the bond bank and its bondholders and for the payments on account of which interest or principal or sinking fund payments or retirement of bonds, other moneys of the bond bank are not then available in accordance with the terms of ~~any~~ such the contract. ~~Required~~ The required debt service reserve ~~shall~~ must be an aggregate amount equal to at least the largest amount of money required by the terms of all contracts between the bond bank and its bondholders to be raised in the then current or any succeeding calendar year for the payment of interest on and maturing principal of outstanding bonds, and sinking fund payments required by the terms of any ~~such~~ contracts to sinking funds established for the payment or redemption of ~~such~~ the bonds.

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

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 97

SENATE BILL NO. 2086

(Political Subdivisions Committee)

(At the request of the North Dakota Municipal Bond Bank)

POLITICAL SUBDIVISION PROTECTION OF SERVICE

AN ACT to create and enact a new section to chapter 6-09.4 of the North Dakota Century Code, relating to the protection of service provided or made available by a political subdivision through a loan from the municipal bond bank or any other state agency or enterprise.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 6-09.4 of the North Dakota Century Code is created and enacted as follows:

Protection of service during term of loan.

1. The service provided or made available by a political subdivision through the construction or acquisition of an improvement, or the revenues therefrom, financed in whole or in part with a loan to the political subdivision from the bond bank or any other state agency or enterprise, may not be curtailed or limited by inclusion of all or any part of the area served by the political subdivision within the boundaries of any other political subdivision, or by the granting of any private franchise for similar service within the area served by the political subdivision, during the term of the loan. The political subdivision providing the service may not be required to obtain or secure any franchise, license, or permit as a condition of continuing to serve the area if it is included within the boundaries of another political subdivision during the term of the loan.
2. Under the circumstances described in subsection 1, nothing prevents the two political subdivisions, with the bond bank or other state agency or enterprise, from negotiating an agreement for the right or obligation to provide the service in question, provided that any agreement is invalid and unenforceable unless the bond bank or other state agency or enterprise is a party to the agreement and unless the agreement contains adequate safeguards to ensure the security and timely payment of any outstanding bonds of the bond bank issued to fund the loan.

Approved March 19, 1997

Filed March 19, 1997

CHAPTER 98

SENATE BILL NO. 2182

(Senators Wanzek, Tomac)
(Representatives D. Johnson, Renner)

AGRICULTURAL MEDIATION SERVICE EXTENSION

AN ACT to amend and reenact sections 6-09.10-03 and 6-09.10-10 of the North Dakota Century Code, relating to extension of the expiration date of the agricultural mediation service; to repeal sections 6-09.10-08.1, 6-09.10-08.2, 6-09.10-08.3, 6-09.10-08.4, 6-09.10-08.5, and 6-09.10-08.6 of the North Dakota Century Code, relating to legal and tax assistance for farmers and small businesses; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.10-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.10-03. North Dakota agricultural mediation service - Powers - Compensation and expenses - Fees. The board shall meet at the call of the chair, as is necessary to fulfill its duties under this chapter. The department of agriculture shall administer the agricultural mediation service. The commissioner of agriculture shall establish an agricultural mediation service to disseminate information to farmers concerning farm credit problems and to provide assistance to seek to resolve farm credit problems. The commissioner shall appoint an administrator of the agricultural mediation service. The commissioner shall hire staff, negotiators, and mediators who may mediate disputes involving farmers and others, either of whom may request assistance. The board may charge the farmer and others a reasonable fee for any assistance provided, such funds to be used to continue the service until June 30, ~~4997~~ 1999. Fees charged to the farmer's creditors are limited to twenty-five dollars per hour, each, for the time spent in mediation sessions. The board shall adopt policies governing the negotiators, staff, and mediators hired under this section. Board members are entitled to receive sixty-five dollars for each day of official service, as directed by the board. The board members are entitled to expenses as provided in sections 44-08-04 and 54-06-09. The expenses provided under this section may be paid from any funds available in the home-quarter purchase fund.

SECTION 2. AMENDMENT. Section 6-09.10-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.10-10. Mediation - Open records and meetings exception. Information created, collected, and maintained by the agricultural mediation service in the course of any formal or informal mediation is confidential and is not subject to the open records requirements of section 44-04-18. Such information may be released only upon written consent of all parties to the mediation or pursuant to an order issued by the court upon a showing of good cause. All mediation meetings and meetings involving the board, staff, negotiators, or mediators wherein the finances of specific farmers, creditors, and others are discussed, are confidential, closed meetings and are not subject to the open meetings requirements of section 44-04-19.

SECTION 3. REPEAL. Sections 6-09.10-08.1, 6-09.10-08.2, 6-09.10-08.3, 6-09.10-08.4, and 6-09.10-08.6 of the North Dakota Century Code and section 6-09.10-08.5 of the 1995 Supplement to the North Dakota Century Code are repealed.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 21, 1997

Filed March 21, 1997

BUILDING AND LOAN ASSOCIATIONS

CHAPTER 99

SENATE BILL NO. 2117

(Industry, Business and Labor Committee)

(At the request of the Department of Banking and Financial Institutions)

SAVINGS AND LOAN ASSOCIATION CONVERSION

AN ACT to create and enact two new sections to chapter 7-01 of the North Dakota Century Code, relating to a state or federal savings and loan association conversion to a state-chartered commercial bank; and to amend and reenact sections 6-03-13.5, 7-01-07, 7-02-11.1, and 7-02-14 of the North Dakota Century Code, relating to a state or federal savings and loan association conversion to a state-chartered commercial bank, federal deposit insurance, and powers granted to state-chartered associations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-13.5 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-03-13.5. National bank, federal savings association, or state savings and loan association conversion to state bank. A national bank, federal savings association, or state savings and loan association located in this state which follows the procedure prescribed by federal law to convert into a state bank, must be granted a state charter if it meets the provisions of the North Dakota Century Code for the incorporation and chartering of a new state bank. Any requirement that shares must be paid in cash may be satisfied by the exchange of shares of the converted state bank for those of the converting national bank, federal savings association, or state savings and loan association, which may be valued at no more than their fair cash market value. The procedure for incorporation of a state bank may be modified by the ~~state banking~~ board to the extent made necessary by the difference between an ordinary incorporation and a conversion and no public hearing need be held on a conversion application. A national bank, federal savings association, or state savings and loan association proposing to convert into a state-chartered bank shall grant the commissioner discretionary authority to conduct an examination. The commissioner shall set fees for ~~such~~ the examination at an hourly rate sufficient to cover all reasonable expenses of the department of banking and financial institutions associated with the examination. Fees must be collected by the commissioner, transferred to the state treasurer, and deposited in the financial institutions' regulatory fund.

SECTION 2. AMENDMENT. Section 7-01-07 of the North Dakota Century Code is amended and reenacted as follows:

7-01-07. Certificate of state banking board required - Examination by board - Review by court - Federal savings and loan deposit insurance required. ~~Whenever~~ If the articles of incorporation of a proposed association are in due form and regularly executed and the bylaws have been approved as required by this chapter, the state

banking board shall ascertain the responsibility, character, and general fitness of the incorporators, ~~and~~ whether ~~or not~~ there is a reasonable need for the existence of ~~such an~~ the association, and whether ~~or not~~ the public convenience and advantage will be promoted thereby. If the banking board is not satisfied with the result of its investigation, within sixty days after ~~said~~ the articles of incorporation and bylaws have been presented to ~~it~~ the board, ~~it~~ the board shall endorse upon each copy of the articles of incorporation the word "refused", ~~with~~ the date of ~~such~~ the endorsement, and the reason for ~~such~~ the refusal; ~~and~~. The board shall return ~~forthwith~~ one copy of ~~such~~ the articles of incorporation to the proposed incorporators from whom the ~~same was~~ articles were received; ~~and~~ ~~such~~. The refusal is conclusive unless the incorporators, within thirty days after the issuance of ~~such~~ the notice of refusal, apply to the district court of Burleigh County, North Dakota, for a writ of mandamus to compel the filing of ~~such~~ the articles of incorporation and granting of a certificate to do business. A savings and loan association shall, after July 1, 1979, secure federal ~~savings and loan insurance~~ ~~corporation~~ deposit insurance with an agency or instrumentality of the United States of America of accounts before it is authorized to commence business. Evidence of securing ~~such~~ that insurance must be furnished to the commissioner before the certificate of authority ~~may be~~ is delivered to the savings and loan association.

SECTION 3. A new section to chapter 7-01 of the North Dakota Century Code is created and enacted as follows:

State savings and loan association conversion to state bank. A state savings and loan association located in this state which follows the procedure prescribed by the board to convert into a state bank, must be granted a state charter if it meets the provisions of the North Dakota Century Code for the incorporation and chartering of a new state bank. Any requirement that shares must be paid in cash may be satisfied by the exchange of shares of the converted state bank for those of the converting state savings and loan association, which may be valued at no more than their fair cash market value. The procedure for incorporation of a state bank may be modified by the board to the extent made necessary by the difference between an ordinary incorporation and a conversion and no public hearing need be held on a conversion application. A state savings and loan association proposing to convert into a state-chartered bank shall grant the commissioner discretionary authority to conduct an examination. The commissioner shall set fees for the examination at an hourly rate sufficient to cover all reasonable expenses of the department of banking and financial institutions associated with the examination. Fees must be collected by the commissioner, transferred to the state treasurer, and deposited in the financial institutions' regulatory fund.

SECTION 4. A new section to chapter 7-01 of the North Dakota Century Code is created and enacted as follows:

Savings association conversion. A federal savings association may convert to a state association under this chapter upon the following terms:

1. The conversion must be approved by vote of the members or shareholders cast in person or by proxy at a special meeting called to consider the action;
2. Notice of the meeting must expressly state the purpose, time, and place of the meeting, and must be mailed, postage prepaid, at least thirty, and not more than sixty days, before the date of the meeting to each member or shareholder of record at the address shown on the association's books;

3. The conversion must be approved by fifty-one percent or more of the votes cast at the meeting; and
4. The conversion must be confirmed by action of applicable federal regulatory authorities and the board.

SECTION 5. AMENDMENT. Section 7-02-11.1 of the North Dakota Century Code is amended and reenacted as follows:

7-02-11.1. Operation without federal savings and loan account deposit insurance prohibited - Liability - Penalty. No state savings and loan association may, after December 31, 1979, engage in the savings and loan business without securing and continuing in force ~~federal savings and loan insurance corporation~~ insurance of accounts with an agency or instrumentality of the United States of America. Any officer or director of any state savings and loan association who violates this section is guilty of a class A misdemeanor and is personally liable to any person aggrieved for any damages caused by the violation.

SECTION 6. AMENDMENT. Section 7-02-14 of the North Dakota Century Code is amended and reenacted as follows:

7-02-14. Powers granted federally chartered savings and loan associations extended to state-chartered associations. Any provision of law to the contrary notwithstanding, any state-chartered savings and loan association having insurance of accounts with ~~the federal savings and loan insurance corporation~~ an agency or instrumentality of the United States of America may, in addition to any loan, investment, ~~or~~ account, or activity now permitted, make any loan, investment, or account ~~which such that the~~ association could make or offer were it incorporated and operating as, or engage in any activity authorized for a federal savings and loan association with its domicile in this state. To the extent that the additional loans, investments, ~~or~~ accounts, or activities hereby authorized, are an enlargement of powers already granted by law, ~~then such~~ the additional loans, investments, ~~and~~ accounts, and activities must be ~~made~~ made on the same terms and conditions and subject to the same limitations as are now permitted or as may hereafter be permitted in case of federally chartered savings and loan associations under presently existing, or later adopted regulations of the ~~federal home loan bank board and the rules and regulations for the federal savings and loan system, or otherwise applicable federal regulatory agency.~~ Any authority that is subject to discretionary approval by the federal regulatory agency is subject to discretionary approval by the state banking board.

Approved April 1, 1997
Filed April 2, 1997

CARRIAGE

CHAPTER 100

HOUSE BILL NO. 1189

(Representatives Soukup, Carlisle, Coats)
(Senators Nalewaja, W. Stenehjem)

EMERGENCY TELECOMMUNICATIONS SERVICE INTERRUPTION

AN ACT to amend and reenact section 8-10-11 of the North Dakota Century Code, relating to the interruption of telecommunications in certain emergencies; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 8-10-11 of the North Dakota Century Code is amended and reenacted as follows:

8-10-11. Interruption of ~~telephone communications~~ telecommunications in kidnapping or hostage emergency - Duty of ~~telephone~~ telecommunications company to assist - Prohibited communications - Penalty.

1. As used in this section, "peace officer" has the same meaning as in section 12.1-01-04.
2. A peace officer ~~who~~ with supervisory control over an incident in which that peace officer has probable cause to believe that an individual is being unlawfully confined or has been taken hostage, who has supervisory control over investigating the incident, and who has lawful jurisdiction in the geographical area where the violation is believed to be occurring, could suffer injury or death as a result of the incident may order a ~~telephone~~ telecommunications company to cut, reroute, or divert ~~telephone lines~~ telecommunications transmissions for the purpose of controlling communications. Nothing in this section may deny the ~~telephone~~ telecommunications company reimbursement for the value of ~~their services provided in~~ or damage to ~~their facilities~~ resulting from ~~their~~ compliance with ~~such~~ the supervising peace officer's order.
3. Each ~~telephone~~ telecommunications company shall designate an employee to serve as a security official and to provide assistance as required by the supervising peace officer under this section.
4. ~~A person~~ An individual may not initiate ~~telephone communications~~ telecommunications with a suspected violator if that ~~person~~ individual knows that an order has been issued under subsection 2. Violation of this subsection is a class B misdemeanor.

CORPORATIONS

CHAPTER 101

HOUSE BILL NO. 1412

(Representatives Jensen, Poolman)
(Senator Grindberg)

SECURITIES REGISTRATION

AN ACT to create and enact a new subsection to section 10-04-06 of the North Dakota Century Code, relating to a "test the waters" exemption to registration of securities; to amend and reenact subsection 4 of section 10-04-03 of the North Dakota Century Code, relating to deposit of security fees; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 10-04-03 of the North Dakota Century Code is amended and reenacted as follows:

4. All fees collected under this chapter ~~shall~~ must be turned deposited in to the general fund of the state treasury, except civil penalties collected from enforcement actions for the purpose of distribution to aggrieved investors may be deposited in a special securities protection fund. All other civil penalties collected, including those collected for the reasonable expenses for the administration of a particular case, must be deposited in the general fund.

SECTION 2. A new subsection to section 10-04-06 of the North Dakota Century Code is created and enacted as follows:

The distribution of a prospectus or similar disclosure document by an issuer to "test the waters" with an offer of a security for the sole purpose of discussing possible business strategies or economic development or soliciting potential indications of interest from prospective purchasers if the issuer:

- a. Is organized under the laws of this state and operates its principal place of business in this state or is a person who is a member of the North Dakota private capital investment network or multistate angel capital electronic network who has registered with the commissioner and who offers, sells, purchases, or exchanges only securities that are registered with the commissioner or the securities and exchange commission.
- b. Does not engage in or propose activities for petroleum exploration, oil production, extractive mining, or any blind pool offering without a specific business purpose.

- c. Discusses potential business strategies and economic development or solicits indications of potential interest in a project or business only within a period of twelve months after receiving approval from the commissioner and does not pay a commission or fee to any person for soliciting a potential investor or prospective purchaser in this state or involving a resident of this state unless the person who receives the commission or fee is registered as a dealer or sales agent in this state.
- d. Intends to file an application to register securities in this state or to receive approval for an exemption under subsection 9 and the issuer intends to offer and sell securities described in section 3(a)11 of the federal Securities Act of 1933, in regulation A or rule 504 of regulation D of the securities and exchange commission, in a small corporate offering registration, or in a state or federal securities registration for a private placement involving only accredited investors as defined by the securities and exchange commission.
- e. Files a solicitation of interest form and copies of any advertising or marketing materials, including scripts for use in telephone, television, electronic, or computer publications, for approval by the commissioner at least ten business days before the issuer begins soliciting indications of interest from potential purchasers and at least ten business days before publishing or distributing any materials or information to any person.
- f. Obtains approval of the commissioner for any amendments or changes in filed forms, marketing materials, or advertisements at least ten business days before distributing the amended marketing materials or amended advertising information to any person.
- g. Stops all communications with prospective investors made in reliance on this exemption immediately after filing an application to register or qualify the securities with the commissioner or with the securities and exchange commission.
- h. Does not accept money or sign completed contracts for sales of securities with any person while soliciting indications of interest and does not complete any sales of securities until at least ten business days after completing a securities registration in this state.
- i. Includes the name, address, and telephone number of the chief executive officer of the issuer, a general description of the business and products, and the following statements in any published notice, marketing materials, or broadcast scripts:

NO MONEY OR OTHER CONSIDERATION IS BEING
SOLICITED AND NONE WILL BE ACCEPTED UNTIL
AFTER THESE SECURITIES ARE REGISTERED OR
QUALIFIED WITH THE SECURITIES
COMMISSIONER OF THIS STATE AND WITH THE
SECURITIES AND EXCHANGE COMMISSION.

NO SALES OF THESE SECURITIES WILL BE MADE
OR COMMITMENT TO PURCHASE ACCEPTED

UNTIL AFTER DELIVERY OF A PROSPECTUS THAT
INCLUDES ADDITIONAL INFORMATION ABOUT
THE OFFERING.

A PROSPECTIVE INVESTOR WHO EXPRESSES AN
INTEREST IN THIS INVESTMENT OR PROJECT IS
NOT OBLIGATED OR COMMITTED TO INVEST
MONEY OR PURCHASE SECURITIES.

- j. Does not know and, in the exercise of reasonable care, could not have known that the issuer or any officer, director, ten percent shareholder, promoter, partner, manager or agent of the issuer has:
- (1) Been the subject of or filed a registration statement that is the subject of a stop order, administrative enforcement order, judgment, injunction, or restraining order issued by any federal or state securities agency, any court of competent jurisdiction, or the United States postal service and which prohibits, denies, or revokes the registration, offer, sale, or purchase of a security, franchise, commodity, or other financial transaction or which involves fraud, deceit, misstatements of material facts, forgery, embezzlement, obtaining money under false pretenses, larceny, conspiracy to defraud, or similar deceptive acts; or
 - (2) Been convicted of any felony or misdemeanor involving the offer, purchase, or sale of a security, franchise, commodity, or financial transaction, or any felony or misdemeanor involving fraud, deceit, forgery, embezzlement, obtaining money under false pretenses, larceny, conspiracy to defraud, or a similar financial crime.

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

Approved April 8, 1997
Filed April 8, 1997

CHAPTER 102

HOUSE BILL NO. 1320

(Representatives Froseth, Schmidt, Warner)
(Senator Tomac)

COOPERATIVE ARTICLES AND NAMES

AN ACT to create and enact a new subsection to section 10-15-05, sections 10-15-08.1, 10-15-08.2, and a new subsection to section 10-15-12.1 of the North Dakota Century Code, relating to the articles of association of a cooperative and cooperative names; and to amend and reenact sections 10-15-07, 10-15-36, and 10-15-54 of the North Dakota Century Code, relating to cooperative existence, annual reports, and fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 10-15-05 of the North Dakota Century Code is created and enacted as follows:

The effective date of the cooperative if a later date than that on which the certificate of association is issued by the secretary of state. A later effective date may not be later than ninety days after the date on which the certificate of association is issued.

SECTION 2. AMENDMENT. Section 10-15-07 of the North Dakota Century Code is amended and reenacted as follows:

10-15-07. Filing articles of association - Cooperative existence. An original of the articles of association, duly signed and acknowledged, must be delivered to the secretary of state for filing. The legal corporate existence of a cooperative begins when the ~~original articles are so delivered~~ certificate of association is issued by the secretary of state or on a later date as specified in the articles of association. The secretary of state shall stamp on the articles of association the date of filing and provide to the cooperative a certificate of the filing.

SECTION 3. Section 10-15-08.1 of the North Dakota Century Code is created and enacted as follows:

10-15-08.1. Cooperative name.

1. The cooperative name:
 - a. Must be expressed in English letters or characters.
 - b. May contain the word "corporation" or "incorporated" or an abbreviation of either of those words.
 - c. May not contain a word or phrase that indicates or implies that it is organized for a purpose other than one or more business purposes for which a cooperative association may be organized under this chapter.

- d. May not be the same as, or deceptively similar to, the name of a domestic or foreign corporation, limited liability company, limited liability partnership, or limited partnership, whether profit or nonprofit, authorized to do business in this state, or a name the right to which is, at the time of organization, in some manner reserved, or is a fictitious name registered with the secretary of state as provided in chapter 45-11, or is a trade name registered with the secretary of state as provided in chapter 47-25, unless there is filed with the articles:
- (1) A written consent to use the name obtained from the domestic or foreign corporation, limited liability company, limited liability partnership, or limited partnership authorized to do business in this state having a deceptively similar name, or the holder of a reserved name, registered trade name or fictitious name; or
 - (2) A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
2. The secretary of state shall determine whether a cooperative name is deceptively similar to another name for purposes of this chapter.
3. This section and section 10-15-08.2 do not:
- a. Abrogate or limit:
 - (1) The law of unfair competition or unfair practices;
 - (2) Chapter 47-25;
 - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks; or
 - (4) Any other rights to the exclusive use of names or symbols; or
 - b. Derogate the common law or the principles of equity.
4. A cooperative that is involuntarily dissolved by the secretary of state under section 10-15-36 may reacquire the right to use that name by reinstating the cooperative within the time provided in section 10-15-36 or by refiling articles of association, unless the name has been adopted for use or reserved by another person, in which case the filing must be rejected unless the filing is accompanied by a written consent or judgment as provided in subdivision d of subsection 1. A cooperative that is unable to reacquire the use of its name shall adopt a new name that complies with this section.

SECTION 4. Section 10-15-08.2 of the North Dakota Century Code is created and enacted as follows:

10-15-08.2. Reserved name.

1. The exclusive right to the use of a name otherwise permitted by section 10-15-08.1 may be reserved by any person.
2. The reservation must be made by filing with the secretary of state a request that the name be reserved, together with the fees provided in section 10-15-54. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a cooperative name reserved under this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee, together with the fees provided in section 10-15-54.
4. The right to the exclusive use of a cooperative name reserved under this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the cancellation, with the fees provided in section 10-15-54.
5. The secretary of state may accept for filing a legible facsimile copy of the signed original of any request for a reserved name which is the same size as the original document and which meets all other requirements of this section.
6. The secretary of state may destroy all reserved name requests and the reserved name requests index one year after expiration.

SECTION 5. A new subsection to section 10-15-12.1 of the North Dakota Century Code is created and enacted as follows:

The fee prescribed in section 10-15-54 for change of registered office may be refunded when in the secretary of state's opinion a change of address of registered office results from rezoning or postal reassignment.

SECTION 6. AMENDMENT. Section 10-15-36 of the North Dakota Century Code is amended and reenacted as follows:

10-15-36. Annual reports - Filing thereof - Fees - Penalties.

1. A cooperative and a foreign cooperative shall file an annual report signed by a principal officer or the general manager setting forth:
 - a. Its name and complete address of its principal place of business.
 - b. The names and addresses of its directors and principal officers.
 - c. A statement, by class and par value, of the amount of stock which it has authority to issue, and the amount issued.
 - d. A statement as to the general type of business engaged in during the prior year.

2. Such annual report must be made on forms prescribed by the secretary of state, and the information therein contained must be given as of the date of the execution of the report.
3. The annual report must be ~~delivered to~~ filed with the secretary of state ~~between January first and~~ on or before March thirty-first of each year following incorporation. A fee of twenty dollars must be paid to the secretary of state for filing the report. If the report does not conform to requirements, it must be returned to the cooperative for necessary corrections. The penalties for failure to file such report do not apply if it is corrected and returned within thirty days after the annual report was returned by the secretary of state. The secretary of state may extend the filing date for the annual report of any cooperative if a written application for an extension is received on or before March thirty-first.
4. Any report filed after March thirty-first may be filed only upon payment to the secretary of state of the following fees:
 - a. If filed prior to May first, twenty-five dollars.
 - b. If filed thereafter but not later than the following March thirty-first, thirty-five dollars.
5. If the report is not filed before May first, the secretary of state shall notify any cooperative or foreign cooperative failing to file its annual report that the cooperative is not in good standing and that it may be dissolved or its authority may be revoked. If the cooperative or foreign cooperative files its annual report after the notice with a fee of ~~twenty five~~ thirty-five dollars, the secretary of state will restore the certificate of incorporation or authority to good standing. Until restored to good standing, the secretary of state may not accept for filing any document respecting such cooperative except those incident to its dissolution or withdrawal. If the annual report of a cooperative is not filed on or before March thirty-first of the year following the year a cooperative is found to be not in good standing, the cooperative ceases to exist and is considered involuntarily dissolved by operation of law. The secretary of state shall note the dissolution of the cooperative on the records of the secretary of state and shall give notice of the action to the dissolved cooperative. Notice by the secretary of state must be mailed to the last reported address of the principal place of business.

If the annual report of a foreign cooperative is not filed on or before March thirty-first of the year following the year it is found to be not in good standing, the foreign cooperative forfeits its authority to transact business in North Dakota. The secretary of state shall note the revocation on the records of the secretary of state and shall give notice of the action to the revoked foreign cooperative. Notice by the secretary of state must be mailed to the last reported address of the principal place of business. The secretary of state's determination that a certificate of authority must be revoked under this section is final.

6. A cooperative which was dissolved for failure to file an annual report, or a foreign cooperative whose authority was forfeited for failure to file an annual report, may be reinstated by filing the past due annual report and paying fifty dollars. The fees must be paid and the report filed within one year following the date of the involuntary dissolution or revocation.

Reinstatement under this section does not affect the rights or liability of any person for the time from the dissolution or revocation to the reinstatement.

7. Proof to the satisfaction of the secretary of state that on or before any of the filing dates prescribed by this section, the report was postmarked by the United States postal service or other carrier service, in a sealed, properly addressed, postage prepaid envelope must be deemed to comply with this requirement. When a filing date falls on a Saturday, Sunday, or other holiday as defined in section 1-03-01, a postmark or verified shipment date on the next business day complies with this requirement.
8. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.

SECTION 7. AMENDMENT. Section 10-15-54 of the North Dakota Century Code is amended and reenacted as follows:

10-15-54. Fees. No document may be filed or recorded nor any certificate issued until all fees therefor have been paid. Any fee or penalty due under this chapter may be recovered in a suit brought by the attorney general in the name of the state. The secretary of state shall charge and collect from any association for:

1. Filing articles of association and issuing a certificate of association, thirty dollars.
2. Filing articles of amendment and issuing a certificate of amendment, twenty dollars.
3. Filing restated articles of association, thirty dollars.
4. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifty dollars.
5. Filing articles or decree of dissolution, twenty dollars.
6. Receiving service of any process, notice, or demand, twenty-five dollars.
7. Filing an application of a foreign cooperative for a certificate of authority to do business in this state and issuing a certificate therefor, forty dollars.
8. For filing a name reservation, a transfer of name reservation, a cancellation of name reservation, or a consent to use of name, ten dollars.
9. Filing any other document or statement, or issuing any other certificate, twenty dollars.

Approved March 26, 1997
Filed March 26, 1997

CHAPTER 103

SENATE BILL NO. 2344

(Senator W. Stenehjem)
(Representative Kretschmar)

CORPORATION AND LLC REVISIONS

AN ACT to create and enact sections 10-19.1-41.1, 10-19.1-72.1, 10-19.1-73.2, 10-19.1-73.3, 10-19.1-75.1, 10-19.1-75.2, 10-19.1-76.1, 10-19.1-76.2, 10-19.1-76.3, 10-19.1-85.1, 10-19.1-132, 10-19.1-133, 10-19.1-134, 10-19.1-135, 10-19.1-136, 10-19.1-137, 10-19.1-138, 10-19.1-139, 10-19.1-140, 10-19.1-141, 10-19.1-142, 10-19.1-143, 10-19.1-144, 10-19.1-145, 10-19.1-146, 10-19.1-147, 10-19.1-148, 10-19.1-149, 10-19.1-150, 10-19.1-151, 10-19.1-152, 10-32-39.1, 10-32-40.1, 10-32-40.2, 10-32-43.1, 10-32-43.2, 10-32-48.1, 10-32-52.1, 10-32-78.1, 10-32-130.1, 10-32-130.2, 10-32-156, 57-38-07.2, and 57-38.1-17.3 of the North Dakota Century Code, relating to the North Dakota Business Corporation Act - General Provisions, the Limited Liability Company Act, limited liability partnerships, income tax, and the Uniform Division of Income Tax Act; to amend and reenact sections 10-06.1-17, 10-19.1-01, 10-19.1-10, 10-19.1-13, 10-19.1-14, 10-19.1-15, 10-19.1-16, 10-19.1-25, 10-19.1-26, 10-19.1-30, 10-19.1-31, 10-19.1-35, 10-19.1-40, 10-19.1-41, 10-19.1-42, 10-19.1-43, 10-19.1-47, 10-19.1-48, 10-19.1-50, 10-19.1-51, 10-19.1-52, 10-19.1-53, 10-19.1-55, 10-19.1-56, 10-19.1-57, 10-19.1-58, 10-19.1-59, 10-19.1-60, 10-19.1-66, 10-19.1-71, 10-19.1-72, 10-19.1-73, 10-19.1-74, 10-19.1-75, 10-19.1-76, 10-19.1-81, 10-19.1-82, 10-19.1-83, 10-19.1-85, 10-19.1-86, 10-19.1-87, 10-19.1-89, 10-19.1-90, 10-19.1-91, 10-19.1-92, 10-19.1-95, 10-19.1-110, 10-19.1-110.1, 10-19.1-115, 10-19.1-117, 10-19.1-123, 10-19.1-124, 10-19.1-127, 10-31-01, 10-31-02, 10-31-02.1, 10-31-02.2, 10-31-03, 10-31-04, 10-31-05, 10-31-07, 10-31-07.1, 10-31-07.2, 10-31-07.3, 10-31-12, 10-31-13, 10-31-13.1, 10-32-02, 10-32-06, 10-32-07, 10-32-10, 10-32-11, 10-32-12, 10-32-13, 10-32-15, 10-32-16, 10-32-17, 10-32-19, 10-32-22, 10-32-23, 10-32-28, 10-32-31, 10-32-32, 10-32-34, 10-32-37, 10-32-38, 10-32-39, 10-32-40, 10-32-42, 10-32-43, 10-32-44, 10-32-47, 10-32-48, subsection 1 of section 10-32-50, sections 10-32-51, 10-32-52, 10-32-53, 10-32-54, 10-32-55, 10-32-56, 10-32-58, 10-32-64, 10-32-66, 10-32-67, 10-32-68, 10-32-72, 10-32-77, 10-32-78, 10-32-79, 10-32-80, 10-32-81, 10-32-83, 10-32-84, 10-32-85, 10-32-86, 10-32-87, 10-32-88, 10-32-89, 10-32-91, 10-32-92, 10-32-93, 10-32-94, 10-32-95, 10-32-96, 10-32-97, 10-32-99, 10-32-100, 10-32-101, 10-32-102, 10-32-103, 10-32-104, 10-32-105, 10-32-106, 10-32-107, 10-32-108, 10-32-109, 10-32-110, 10-32-113, 10-32-114, 10-32-115, 10-32-117, 10-32-119, 10-32-121, 10-32-122, 10-32-127, 10-32-135, 10-32-136, 10-32-137, 10-32-138, 10-32-139, 10-32-140, 10-32-141, 10-32-142, 10-32-143, 10-32-144, 10-32-145, 10-32-146, 10-32-147, 10-32-148, 10-32-149, 10-32-150, 10-32-152, 10-32-153, 10-32-154, 10-32-155, 45-10.1-01, 45-10.1-02, 45-10.1-03, 45-10.1-04, 45-10.1-07.1, 45-10.1-08, 45-10.1-51, 45-10.1-52, 45-10.1-53, 45-10.1-54, 45-10.1-55, 45-10.1-56, 45-10.1-57, 45-10.1-58, 45-20-01, 45-22-01, 45-22-03, 45-22-04, 45-22-05, 45-22-06, 45-22-07, 45-22-08, 45-22-11, 45-22-12, 45-22-13, 45-22-14, 45-22-16, 45-22-17, 45-22-18, 45-22-20, 45-22-22, 45-22-23, 45-22-24, 45-22-25, 45-22-26, 45-22-27, 57-38-07.1, and 57-38.1-17.2 of the North Dakota Century Code, relating to corporations or limited liability company farming, the Business Corporation Act, the Professional

Organizations Act, the Limited Liability Company Act, the Uniform Limited Partnership Act, events causing dissolution and winding up of partnership business, limited liability partnerships, income tax, and the Uniform Division of Income Tax Act; to repeal sections 10-19.1-54, 10-19.1-73.1, 10-19.1-77, 10-19.1-78, 10-19.1-79, 10-19.1-80, chapters 10-22, 10-23, sections 10-32-41, 10-32-45, 10-32-46, 10-32-90, and 10-32-151 of the North Dakota Century Code, relating to the North Dakota Business Corporation Act - General Provisions, the North Dakota Business Corporation Act - Foreign Corporations, the North Dakota Business Corporation Act - Administration, Reports, Fees, Effect, and the Limited Liability Company Act; and to provide penalties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-06.1-17 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-17. Annual report - Contents - Filing requirements. ~~Prior to~~ Before April fifteenth of each year, every corporation engaged in farming or ranching after June 30, 1981, and every limited liability company engaged in farming or ranching shall file with the secretary of state a report executed by its president, a vice president, secretary, or treasurer containing all of the following information with respect to the preceding calendar year:

1. The name of the corporation or limited liability company.
2. The address of the registered office of the corporation or limited liability company in this state and the name of its registered agent in this state at that address.
3. With respect to each corporation:
 - a. A statement of the aggregate number of shares the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
 - b. A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and services, if any, within a class.
4. With respect to each shareholder or member:
 - a. The name and address of each, including the names and addresses and relationships of beneficiaries of trusts and estates which own shares or membership interests;
 - b. The number of shares or membership interests or percentage of shares or membership interests owned by each;
 - c. The relationship of each;
 - d. A statement of whether each is a citizen or permanent resident alien of the United States; and
 - e. A statement of whether at least one is an individual residing on or operating the farm or ranch.

4. 5. With respect to management:
 - a. If a corporation, then the names and addresses of the officers and members of the board of directors; or
 - b. If a limited liability company, then the names and addresses of the managers and members of the board of governors.
5. 6. A statement listing the acreage [hectarage] and location listed by section, township, range, and county of all land in the state owned or leased by the corporation or limited liability company and used for farming or ranching. The statement must also designate which, if any, of the acreage [hectarage] is leased from or jointly owned with any shareholder or member and list the name of the shareholder or member with that acreage [hectarage].
6. 7. A statement of the percentage of the annual average gross income of the corporation or limited liability company which has been derived from farming or ranching operations over the previous five years or for each year of its existence if less than five years.
7. 8. A statement of the percentage of gross income of the corporation or limited liability company derived from nonfarm rent, nonfarm royalties, dividends, interest, and annuities during the period covered by the report.
8. 9. A corporation engaged in farming which fails to file an annual report is subject to the penalties provided in section ~~40-23-02~~ 10-19.1-147 except that the penalties must be calculated from the date of the report required by this section.
9. 10. A limited liability company engaged in farming which fails to file an annual report is subject to the penalties provided in subsections 5 and 6 of section 10-32-149 except that the penalties must be calculated from the date of the report required by this section.

SECTION 2. AMENDMENT. Section 10-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-01. Definitions. For the purposes of this chapter, unless the context clearly indicates that a different meaning is intended:

1. "Acquiring corporation" means the domestic or foreign corporation that acquires the shares of a corporation in an exchange.
2. "Address" means ~~mailing address~~:
 - a. In the case of a registered office or principal executive office, the ~~term means the office~~ mailing address, including a zip code of the actual office location, which may not be only a post-office box; and
 - b. In any other case, the mailing address, including a zip code.
3. "Articles" means:

- a. In the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a demand retaining the two-thirds majority for shareholder approval of certain transactions, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of shares, a statement of cancellation of authorized shares, articles of merger, articles of abandonment, and articles of dissolution.
 - b. In the case of a foreign corporation, the term includes all documents serving a similar function required to be filed with the secretary of state or other officer of the corporation's state of incorporation.
4. "Board" or "board of directors" means the board of directors of a corporation.
 5. "Board member" means:
 - a. An individual serving on the board of directors in the case of a corporation; and
 - b. An individual serving on the board of governors in the case of a limited liability company.
 6. "Bylaws" means the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how that code is designated.
 7. "Class", when used with reference to shares, means a category of shares that differs in designation or one or more rights or preferences from another category of shares of the corporation.
 - ~~7.~~ 8. "Closely held corporation" means a corporation that does not have more than thirty-five shareholders.
 - ~~8.~~ 9. "Constituent corporation" means a domestic or foreign corporation that is a party to a merger or exchange.
 - ~~9.~~ 10. "Corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this chapter.
 - ~~10.~~ 11. "Director" means a member of the board.
 - ~~11.~~ 12. "Distribution" means a direct or indirect transfer of money or other property, other than its own shares, with or without consideration, or an incurrence or issuance of indebtedness, by a corporation to any of its shareholders in respect of its shares: A distribution, and may be in the form of a dividend or a distribution in liquidation, or as consideration for the purchase, redemption, or other acquisition of its shares, or otherwise.
 - ~~12.~~ 13. "Division" or "combination" means dividing or combining shares of a class or series, whether issued or unissued, into a greater or lesser number of shares of the same class or series.

43. 14. "Filed with the secretary of state" means that either a signed original or a legible facsimile copy of a signed original of a request for reserved name; or a signed original of a document all other documents meeting the applicable requirements of this chapter, together with the fees provided in ~~chapter 10-23~~ section 10-19.1-147, has been delivered to the secretary of state and has been determined by the secretary of state to conform to law. The secretary of state shall then endorse on the original the word "filed" and the month, day, and year, and record the document in the office of the secretary of state.
44. 15. "Foreign corporation" means a corporation organized for profit which is incorporated under laws other than the laws of this state for a purpose ~~or purposes~~ for which a corporation may be incorporated under this chapter.
45. 16. "Foreign limited liability company" means a limited liability company organized for profit that is organized under laws other than the laws of this state for a purpose for which a limited liability company may be organized under chapter 10-32.
46. 17. "Good faith" means honesty in fact in the conduct of ~~the~~ an act or transaction ~~concerned.~~
47. 18. "Intentionally" means that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a statute if the person intentionally does the act or causes the result prohibited by the statute, or if the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.
48. 19. ~~A person "knows"~~ "Knows" or has "knowledge" ~~of a fact when means~~ the person has actual knowledge of a fact. A person does not "know" or have "knowledge" of a fact merely because the person has reason to know of the fact.
49. 20. "Legal representative" means a person empowered to act for another person, including an agent, manager, officer, partner, or associate of; an organization; a trustee of a trust; a personal representative; ~~an executor of a will; an administrator of an estate;~~ a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator ~~of the person or estate of a person.~~
20. 21. "Limited liability company" means a limited liability company, other than a foreign limited liability company, organized under chapter 10-32.
22. "Nonprofit corporation" means a corporation, whether domestic or foreign, incorporated under or governed by chapter 10-33.
24. 23. "Notice" is given by a shareholder of a corporation to the corporation or an officer of the corporation when in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation.

a. In all other cases, "notice" is given to a person:

- (1) When mailed to the person at an address designated by the person or at the last known address of the person; or
 - (2) When handed to the person; or
 - (3) When left at the office of the person with a clerk or other person in charge of the office; or
 - (a) If there is no one in charge, when left in a conspicuous place in the office; or
 - (b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing ~~therein~~ there.
- b. Notice ~~by mail~~ is given by mail when deposited in the United States mail with sufficient postage affixed.
- c. Notice is deemed received when it is given.
- ~~22.~~ 24. "Officer" means ~~a person~~ an individual who is eighteen years of age or more who is elected, appointed, or otherwise designated as an officer by the board; and any other person, or deemed elected as an officer pursuant to section 10-19.1-56.
- ~~23.~~ 25. "Organization" means ~~a~~ whether domestic or foreign, a corporation incorporated in or authorized to do business in this state under this or another chapter of this code, limited liability company, partnership, limited partnership, limited liability partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.
- ~~24.~~ 26. "Outstanding shares" means all shares duly issued and not reacquired by a corporation.
- ~~25.~~ 27. "Owners" means:
- a. Shareholders in the case of a corporation; and
 - b. Members in the case of a limited liability company or a nonprofit corporation.
- ~~26.~~ 28. "Ownership interests" means:
- a. Shares in the case of a corporation; and
 - b. Membership interests in the case of a nonprofit corporation or limited liability company; and
 - c. Similar interests in other organizations.
- ~~27.~~ 29. "Parent" of a specified corporation means a corporation or limited liability company that directly, or indirectly through related corporations or limited liability companies, owns more than fifty percent of the voting

power of the shares entitled to vote for directors of the specified corporation.

- 28: 30. "Principal executive office" means an office where the elected or appointed president of a corporation has an office; ~~if, or if the corporation has no elected or appointed president "principal executive office" means, then~~ the registered office of the corporation.
- 29: "Related organization" of a specified corporation means:
- a. A parent or subsidiary of the specified corporation;
 - b. Another subsidiary of a parent of the specified corporation;
 - c. A limited liability company owning, directly or indirectly, more than fifty percent of the voting power of the shares entitled to vote for directors of the specified corporation;
 - d. A limited liability company having more than fifty percent of the voting power of its membership interests entitled to vote for governors owned directly or indirectly by the specified corporation;
 - e. A limited liability company having more than fifty percent of the voting power of its membership interests entitled to vote for governors owned directly or indirectly by either:
 - (1) A parent of the specified corporation; or
 - (2) A limited liability company owning, directly or indirectly, more than fifty percent of the voting power of the shares entitled to vote for directors of the specified corporation; or.
 - f. A corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly or indirectly by a limited liability company owning, directly or indirectly, more than fifty percent of the voting power of the shares entitled to vote for directors of the specified corporation.
31. "Registered office" means the place in this state designated in the articles as the registered office of the corporation.
32. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:
- a. Owns, directly or indirectly, at least fifty percent of the shares, membership interests, or other ownership interests of another organization;
 - b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or more of the voting members of the governing body of another organization; or
 - c. Has the power, directly or indirectly, to direct or cause the direction of the management and policies of another organization, whether through the ownership of voting interests, by contract, or otherwise.

- ~~30.~~ 33. "Security" has the meaning given it in subsection 13 of section 10-04-02.
- ~~31.~~ 34. "Series" means a category of shares, within a class of shares authorized or issued by a corporation by or pursuant to its articles, that have some of the same rights and preferences as other shares within the same class, but that differ in designation or one or more rights and preferences from another category of shares within that class.
- ~~32.~~ 35. "Share" means one of the units, however designated, into which the shareholders' proprietary interests in a corporation are divided.
- ~~33.~~ 36. "Shareholder" means a person registered on the books or records of a corporation or its transfer agent or registrar as the owner of whole or fractional shares of the corporation.
- ~~34.~~ 37. "Signed" means that the signature of a person has been placed on a document, as provided in subsection 39 of section 41-01-11, and ~~with:~~
- a. With respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter, the articles or bylaws, or a resolution approved by the affirmative vote of the required proportion or number of the directors or the holders of the required proportion or number of the voting power of the shares present and entitled to vote. ~~A signature on;~~ and
 - b. With respect to a document not required by this chapter to be filed with the secretary of state, the signature may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on the document.
- ~~35.~~ 38. "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.
- ~~36.~~ 39. "Subsidiary" of a specified corporation means:
- a. A corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly, or indirectly through related corporations or limited liability companies, by the specified corporation; or
 - b. A limited liability company having more than fifty percent of the voting power of its membership interests entitled to vote for governors owned directly, or indirectly through related limited liability companies or corporations, by the specified limited liability company.
- ~~37.~~ 40. "Surviving corporation" means the domestic or foreign corporation resulting from a merger.
- ~~38.~~ 41. "Vote" includes authorization by written action.
- ~~39.~~ 42. "Written action" means a written document signed by all of the persons required to take the action ~~described. The term also means,~~ or the counterparts of a written document signed by any of the persons taking the action described. Each counterpart constitutes the action of the

person signing it, and all the counterparts, taken together, constitute one written action by all of the persons signing them.

SECTION 3. AMENDMENT. Section 10-19.1-10 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-10. Articles.

1. The articles of incorporation must contain:
 - a. The name of the corporation.
 - b. The address of the registered office of the corporation and the name of its registered agent, at that address.
 - c. The aggregate number of shares that the corporation has authority to issue.
 - d. The name and address of each incorporator.
 - e. The effective date of ~~the corporation~~ incorporation if a later date than that on which the certificate of incorporation is issued by the secretary of state: ~~A later effective date, which~~ may not be later than ninety days after the date on which the certificate of incorporation is issued.
2. The articles of incorporation may not contain:
 - a. Any provision limiting the right of cumulative voting as guaranteed by section 6 of article XII of the Constitution of North Dakota.
 - b. Any provision authorizing the issuance of stocks or bonds in violation of section 9 of article XII of the Constitution of North Dakota.
3. The following provisions govern a corporation unless modified in the articles:
 - a. A corporation has general business purposes as provided in section 10-19.1-08.
 - b. A corporation has perpetual existence and certain powers as provided in section 10-19.1-26.
 - c. The power to adopt, amend, or repeal the bylaws is vested in the board as provided in section 10-19.1-31.
 - d. The affirmative vote of a majority of directors present is required for an action of the board as provided in section 10-19.1-46.
 - e. A written action by the board taken without a meeting must be signed by all directors as provided in section 10-19.1-47.
 - f. The board may authorize the issuance of securities and rights to purchase securities as provided in subsection 1 of section 10-19.1-61.

- g. All shares are common shares entitled to vote and are of one class and one series as provided in subdivisions a and b of subsection 2 of section 10-19.1-61.
- h. All shares have equal rights and preferences in all matters not otherwise provided for by the board as provided in subdivisions a and b of subsection 2 of section 10-19.1-61.
- i. The par value of shares is fixed at one cent per share for certain purposes and may be fixed by the board for certain other purposes as provided in subdivisions a and b of subsection 2 of section 10-19.1-61.
- j. The board or the shareholders may issue shares for any consideration or for no consideration to effectuate share dividends or splits and determine the value of nonmonetary consideration as provided in subsection 1 of section 10-19.1-63.
- k. Shares of a class or series may not be issued to holders of shares of another class or series to effectuate share dividends or splits, unless authorized by a majority of the voting power of the shares of the same class or series as the shares to be issued as provided in subsection 1 of section 10-19.1-63.
- l. A corporation may issue rights to purchase securities whose terms, provisions, and conditions are fixed by the board as provided in section 10-19.1-64.
- m. The affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote at a duly held meeting is required for an action of the shareholders, except where this chapter requires the affirmative vote of a majority of the voting power of all shares entitled to vote as provided in subsection 1 of section 10-19.1-74.
- n. Shares of a corporation acquired by the corporation may be reissued as provided in subsection 1 of section 10-19.1-93.
- o. An exchange need not be approved by shareholders of the acquiring corporation unless the outstanding shares entitled to vote of that corporation will be increased by more than twenty percent immediately after the exchange as provided in subdivision c of subsection 3 of section 10-19.1-98.
- p. An exchange need not be approved by shareholders of the acquiring corporation unless the outstanding participating shares of that corporation will be increased by more than twenty percent immediately after the exchange as provided in subdivision d of subsection 3 of section 10-19.1-98.
- q. Each share has one vote unless otherwise provided in the terms of the share as provided in subsection 3 of section 10-19.1-77.
- r. The board may effect share dividends, divisions, and combinations under certain circumstances without shareholder approval as provided in section 10-19.1-61.1.

4. The following provisions govern a corporation unless modified either in the articles or in the bylaws:
 - a. ~~Directors serve~~ A director serves for an indefinite term that expires upon the election and qualification of a successor as provided in section 10-19.1-35.
 - b. The compensation of directors is fixed by the board as provided in section 10-19.1-37.
 - c. The method provided in section 10-19.1-41 or 10-19.1-41.1 must be used for removal of directors.
 - d. The method provided in section 10-19.1-42 must be used for filling board vacancies.
 - e. If the board fails to select a place for a board meeting, it must be held at the principal executive office as provided in subsection 1 of section 10-19.1-43.
 - f. ~~The~~ A director may call a board meeting, and the notice of a ~~board~~ meeting need not state the purpose of the meeting as provided in subsection 3 of section 10-19.1-43.
 - g. A majority of the board is a quorum for a board meeting as provided in section 10-19.1-45.
 - h. A committee must consist of one or more persons, who need not be directors, appointed by affirmative vote of a majority of the directors present as provided in subsection 2 of section 10-19.1-48.
 - i. The board may establish a special litigation committee as provided in section 10-19.1-48.
 - j. Officers may delegate some or all of their duties and powers, if not prohibited by the board from doing so as provided in section 10-19.1-59.
 - k. Regular meetings of shareholders need not be held, unless demanded by a shareholder under certain conditions as provided in section 10-19.1-71.
 - l. No fewer than ten nor more than fifty days' notice is required for a meeting of shareholders as provided in subsection 3 of section 10-19.1-73.
 - m. The number of shares required for a quorum at a shareholders' meeting is a majority of the voting power of the shares entitled to vote at the meeting as provided in section 10-19.1-76.
 - n. The board may fix a date up to fifty days before the date of a shareholders' meeting as the date for the determination of the holders of shares entitled to notice of and entitled to vote at the meeting as provided in subsection 1 of section 10-19.1-77.

- o. Indemnification of certain persons is required as provided in section 10-19.1-91.
 - p. The board may authorize, and the corporation may make, distributions not prohibited, limited, or restricted by an agreement as provided in subsection 1 of section 10-19.1-92.
5. The following provisions relating to the management of the business or the regulation of the affairs of a corporation may be included either in the articles or, except for naming members of the first board fixing a greater than majority director or shareholder vote or giving or prescribing the manner of giving voting rights to persons other than shareholders otherwise than pursuant to the articles, or eliminating or limiting a director's personal liability, in the bylaws:
- a. The members of the first board may be named in the articles as provided in subsection 1 of section 10-19.1-32.
 - b. A manner for increasing or decreasing the number of directors as provided in section 10-19.1-33.
 - c. Additional qualifications for directors may be imposed as provided in section 10-19.1-34.
 - d. Directors may be classified as provided in section 10-19.1-38.
 - e. The day or date, time, and place of board meetings may be fixed as provided in subsection 1 of section 10-19.1-43.
 - f. Absent directors may be permitted to give written consent or opposition to a proposal as provided in section 10-19.1-44.
 - g. A larger than majority vote may be required for board action as provided in section 10-19.1-46.
 - h. Authority to sign and deliver certain documents may be delegated to an officer or agent of the corporation other than the president as provided in section 10-19.1-53.
 - i. Additional officers may be designated as provided in section ~~10-19.1-54~~ 10-19.1-52.
 - j. Additional powers, rights, duties, and responsibilities may be given to officers as provided in section 10-19.1-53.
 - k. A method for filling vacant offices may be specified as provided in subsection 3 of section 10-19.1-58.
 - l. A certain officer or agent may be authorized to sign share certificates as provided in subsection 1 of section 10-19.1-66.
 - m. The transfer or registration of transfer of securities may be restricted as provided in section 10-19.1-70.
 - n. The day or date, time, and place of regular shareholder meetings may be fixed as provided in subsection 3 of section 10-19.1-71.

- o. Certain persons may be authorized to call special meetings of shareholders as provided in subsection 1 of section 10-19.1-72.
 - p. Notices of shareholder meetings may be required to contain certain information as provided in subsection 4 of section 10-19.1-73.
 - q. A larger than majority vote may be required for shareholder action as provided in section 10-19.1-74.
 - r. Voting rights may be granted in or pursuant to the articles to persons who are not shareholders as provided in subsection 4 of section 10-19.1-77.
 - s. Corporate actions giving rise to dissenter rights may be designated as provided in subdivision d of subsection 1 of section 10-19.1-87.
 - t. The rights and priorities of persons to receive distributions may be established as provided in section 10-19.1-92.
 - u. A director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles as provided in section 10-19.1-50.
6. The articles may contain other provisions not inconsistent with law relating to the management of the business or the regulation of the affairs of the corporation.
 7. It is not necessary to set forth in the articles any of the corporate powers granted by this chapter.

SECTION 4. AMENDMENT. Section 10-19.1-13 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-13. Corporate name.

1. The corporate name:
 - a. Must be in the English language or in any other language expressed in English letters or characters.
 - b. Must contain the word "company", "corporation", "incorporated", or "limited", or ~~must contain~~ an abbreviation of one or more of these words; ~~or the word "company" or the abbreviation "Co."~~.
 - c. May not contain a word or phrase that indicates or implies that it is ~~incorporated for a purpose other than one or more business purposes for which a corporation~~ may not be incorporated under this chapter.
 - d. ~~May not be the same as, or deceptively similar to, the name of a domestic or foreign corporation, limited liability company, or limited partnership, whether profit or nonprofit, authorized to do business in this state, or a name the right to which is, at the time of incorporation, reserved in the manner provided in section 40-19.1-14 or is a fictitious name registered with the office of the~~

secretary of state in the manner provided in chapter 45-11 or is a trade name registered with the office of the secretary of state in the manner provided in chapter 47-25, unless there is filed with the articles:

- (1) The written consent of the domestic or foreign corporation, limited liability company, limited partnership, or partnership authorized to do business in this state having a deceptively similar name or the holder of a reserved name or registered trade name to use the deceptively similar name; or
- (2) A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.

This subsection does not affect the right of a domestic corporation existing on July 1, 1985, or a foreign corporation authorized to do business in this state on that date to continue the use of its name. May not contain a word or phrase that indicates or implies that it is incorporated for a purpose other than a legal business purpose for which a corporation may be incorporated under this chapter.

e. May not be the same as, or deceptively similar to:

- (1) The name whether foreign and authorized to do business in this state, or domestic, unless there is filed with the articles a document which complies with subsection 2 of this section, of:
 - (a) Another corporation;
 - (b) A corporation incorporated or authorized to do business in this state under another chapter of this code;
 - (c) A limited liability company;
 - (d) A limited partnership; or
 - (e) A limited liability partnership; or
- (2) A name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
- (3) A fictitious name registered in the manner provided in chapter 45-11; or
- (4) A trade name registered in the manner provided in chapter 47-25.

2. The secretary of state shall determine whether a corporate name is "deceptively similar" to another name for purposes of this chapter.
3. This section and section 10-19.1-14 do not:
 - a. Abrogate or limit:

- (1) The law of unfair competition or unfair practices;
 - (2) Chapter 47-25;
 - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks; or
 - (4) Any other rights to the exclusive use of names or symbols; or
 - b. Derogate the common law or the principles of equity.
4. A corporation that is merged with another domestic or foreign ~~corporation~~ organization, or that is incorporated by the reorganization of one or more domestic or foreign ~~corporations~~ organizations, or that acquires by sale, lease, or other disposition to or exchange with a domestic ~~corporation~~ organization all or substantially all of the assets of another domestic or foreign ~~corporation~~ organization including its name, may have the same name as that used in this state by any of the other ~~corporations~~ organizations, if the other ~~corporation was~~ organization:
- a. Was incorporated, organized, formed, or registered under the laws of; or is this state;
 - b. Is authorized to transact business or conduct activities in, this state;
 - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
 - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
 - e. Holds a trade name registered in the manner provided in chapter 47-25.
5. The use of a name by a corporation in violation of this section does not affect or vitiate its corporate existence; ~~but.~~ However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the corporation from doing business under a name assumed in violation of this section, although its articles may have been filed with the secretary of state and a certificate of incorporation issued.
6. A corporation whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section 10-23-02-2 10-19.1-146 may reacquire the right to use that name by refiling articles of incorporation pursuant to section 10-19.1-11, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment ~~pursuant to subdivision d of subsection 4.~~ A corporation that cannot reacquire the use of its corporate name shall adopt a new corporate name that complies with the provisions of this section-:
- a. By refiling articles of incorporation pursuant to section 10-19.1-11;
 - b. By amending pursuant to section 10-19.1-127; or

c. By reinstating pursuant to section 10-19.1-146,

unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 2. A corporation that cannot reacquire the use of its corporate name shall adopt a new corporate name which complies with the provisions of this section.

7. If the secretary of state determines that a corporate name is "deceptively similar" to another name for purposes of this chapter, then the corporate name may not be used unless there is filed with the articles:

a. The written consent of the holder of the rights to the name to which the proposed name has been determined to be deceptively similar; or

b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.

This subsection does not affect the right of a domestic corporation existing on the effective date of this Act, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.

SECTION 5. AMENDMENT. Section 10-19.1-14 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-14. Reserved name.

1. The exclusive right to the use of a corporate name otherwise permitted by section 10-19.1-13 may be reserved by any person.
2. The reservation must be made by filing with the secretary of state a request that the name be reserved, together with the fees provided in ~~chapter 10-23~~ section 10-19.1-147:
 - a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.
 - b. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a corporate name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee, together with the fees provided in ~~chapter 10-23~~ section 10-19.1-147.
4. The right to the exclusive use of a corporate name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the cancellation, together with the fees provided in ~~chapter 10-23~~ section 10-19.1-147.

5. The secretary of state may accept for filing a legible facsimile copy of the signed original of any request for reserved name.
6. The secretary of state may destroy all reserved name requests and index thereof one year after expiration.

SECTION 6. AMENDMENT. Section 10-19.1-15 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-15. Registered office - Registered agent.

1. A corporation shall continuously maintain a registered office in this state. A registered office need not be the same as the principal place of business or the principal executive office of the corporation.
2. A corporation shall ~~designate in its articles~~ appoint and continuously maintain a registered agent: ~~The registered agent who may be an:~~
 - a. An individual residing in this state; ~~a;~~
 - b. A domestic corporation whether incorporated under this chapter or under another provision of this code or domestic limited liability company; ~~i; or a~~
 - c. A foreign corporation whether authorized to do business or conduct activities under this chapter or another provision of this code or a foreign limited liability company authorized to transact business in this state.
3. The registered agent shall maintain a business office that is identical with the registered office. Proof of the registered agent's consent to serve in that capacity must be filed with the secretary of state, together with the fees provided in ~~chapter 10-23~~ section 10-19.1-147.

SECTION 7. AMENDMENT. Section 10-19.1-16 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-16. Change of registered office or registered agent - Change of name of registered agent.

1. A corporation may change its registered office, change its registered agent, or state a change in the name of its registered agent by filing with the secretary of state, along with the fees provided in ~~chapter 10-23~~ section 10-19.1-147, a statement containing:
 - a. The name of the corporation.
 - b. If the address of its registered office is to be changed, the new address of its registered office.
 - c. If its registered agent is to be changed, the name of its new registered agent.
 - d. If the name of its registered agent is to be changed, the name of its registered agent as changed.

- e. A statement that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.
 - f. A statement that the change of registered office or registered agent was authorized by resolution approved by the board.
2. A registered agent of a corporation may resign by filing with the secretary of state a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the corporation at its principal executive office or to a legal representative of the corporation. The appointment of the agent terminates thirty days after the notice is filed with the secretary of state.
 3. If the business address or the name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each corporation represented by that agent by filing with the secretary of state a statement for each corporation as required in subsection 1, except that it need be signed only by the registered agent, need not be responsive to subdivision f, and must state that a copy of the statement has been mailed to each of those corporations or to the legal representative of each of those corporations.
 4. The fee prescribed in ~~chapter 10-23~~ section 10-19.1-147 for change of registered office must be refunded when in the secretary of state's opinion a change of address of registered office results from rezoning or postal reassignment.

SECTION 8. AMENDMENT. Section 10-19.1-25 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-25. Amendment of articles in court-supervised reorganization.

1. Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of the corporation, pursuant to the provisions of any applicable statute of the United States relating to reorganization of corporations, the articles may be amended, in the manner provided in this section, in as many respects as may be necessary to carry out the plan and to put it into effect, so long as the articles as amended contain only provisions which might be lawfully contained in original articles at the time of making the amendment. In particular, and without limitation upon any general power of amendment, the articles may be amended ~~for such purpose so as~~ to:
 - a. Change the corporate name, period of duration, or corporate purposes of the corporation.
 - b. Repeal, alter, or amend the bylaws of the corporation.
 - c. Change the aggregate number of shares, or shares of any class, which the corporation has the authority to issue.
 - d. Change the preferences, limitations, relative rights in respect of all or any part of the shares of the corporation, and classify, reclassify, or cancel all or any part thereof, whether issued or unissued.

- e. Authorize the issuance of bonds, debentures, or other obligations of the corporation, whether convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof.
 - f. Constitute or reconstitute and classify or reclassify board and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.
2. Amendments to the articles pursuant to subsection 1 must be made in the following manner:
 - a. Articles of amendment approved by decree or order of the court must be executed and verified by the person or persons designated or appointed by the court for that purpose and must set forth the name of the corporation, the amendments of the articles approved by the court, the date of the decree or order approving the articles of amendment, and the title of the proceedings in which the decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation under the provisions of an applicable statute of the United States.
 - b. An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to law and that all fees have been paid as provided in ~~chapter 10-23~~ section 10-19.1-147, the original must be recorded in the office of the secretary of state.
 3. The articles of amendment become effective upon their acceptance by the secretary of state or at another time within thirty days after acceptance if the articles of amendment so provide.
 4. The articles are amended accordingly with the same effect as if the amendment had been adopted by unanimous action of the directors and shareholders.

SECTION 9. AMENDMENT. Section 10-19.1-26 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-26. Powers General powers.

1. A corporation has the powers set forth in this section, subject to any limitations provided in any other statute of this state or in its articles.
2. A corporation has perpetual duration.
3. A corporation may sue and be sued, complain and defend and participate as a party or otherwise in any legal, administrative, or arbitration proceeding, in its corporate name.
4. A corporation may purchase, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest ~~therein~~ in property, wherever situated.

5. A corporation may sell, convey, mortgage, create a security interest in, lease, exchange, transfer, or otherwise dispose of all or any part of its real or personal property, or any interest ~~therein~~ in property, wherever situated.
6. A corporation may purchase, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, exchange, mortgage, lend, create a security interest in, or otherwise dispose of ~~and otherwise~~, use and deal in and with, securities or other interests in, or obligations of, a person or direct or indirect obligations of any domestic or foreign government or instrumentality ~~thereof~~.
7. A corporation may make contracts and incur liabilities, borrow money, issue its securities, and secure any of its obligations by mortgage of or creation of a security interest in all or any of its property, franchises, and income.
8. A corporation may invest and reinvest its funds.
9. A corporation may take and hold real and personal property, whether or not of a kind sold or otherwise dealt in by the corporation, as security for the payment of money loaned, advanced, or invested.
10. A corporation may conduct its business, carry on its operations, have offices, and exercise the powers granted by this chapter anywhere in the universe.
11. Except as otherwise prohibited by law, a corporation may make donations, irrespective of corporate benefit, for the public welfare; for social, community, charitable, religious, educational, scientific, civic, literary, ~~and testing for,~~ and public safety purposes; ~~and for similar or related purposes;~~ for the purpose of fostering national or international amateur sports competition; ~~and for~~ the prevention of cruelty to children and animals; and for similar or related purposes.
12. A corporation may pay pensions, retirement allowances, and compensation for past services ~~to and for the benefit of~~, and establish, ~~maintain, continue, and carry out, wholly or partially at the expense of the corporation,~~ employee or incentive benefit plans, trusts, and provisions ~~to or for the benefit of;~~ any or all of its and its related organizations' officers, managers, directors, governors, employees, and agents and, in the case of a related organization that is a limited liability company, members who provide services to the limited liability company, and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for ~~and on behalf of~~ a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.
13. A corporation may participate in any capacity in the promotion, organization, ownership, management, and operation of any organization or in any transaction, undertaking, or arrangement that the participating corporation would have power to conduct by itself, whether or not the participation involves sharing or delegation of control ~~with or to others~~.

14. A corporation may provide for its benefit life insurance and other insurance with respect to the services of ~~any or all~~ of its officers, directors, employees, and agents, or on the life of a shareholder for the purpose of acquiring at the death of the shareholder any or all shares in the corporation owned by the shareholder.
15. A corporation may have, alter at pleasure, and use a corporate seal as provided in section 10-19.1-27.
16. A corporation may adopt, amend, and repeal bylaws relating to the management of the business or the regulation of the affairs of the corporation as provided in section 10-19.1-31.
17. A corporation may establish committees of the board of directors, elect or appoint persons to the committees, and define their duties as provided in section 10-19.1-48 and fix their compensation.
18. A corporation may elect or appoint officers, employees, and agents of the corporation, and define their duties and fix their compensation.
19. A corporation may issue securities and rights to purchase securities as provided in sections 10-19.1-61 through 10-19.1-69.
20. A corporation may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist persons as provided in section 10-19.1-89.
21. A corporation may make advances to its directors, officers, and employees and those of its subsidiaries as provided in section 10-19.1-90.
22. A corporation shall indemnify those persons identified in section 10-19.1-91 against certain expenses and liabilities only as provided in section 10-19.1-91 and may indemnify other persons.
23. A corporation may conduct all or part of its business under one or more trade names as provided in chapter 47-25.
24. A corporation may acquire an ownership interest in another organization.
25. A corporation may have and exercise all other powers necessary or convenient to effect any or all of the business purposes for which the corporation is incorporated.

SECTION 10. AMENDMENT. Section 10-19.1-30 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-30. Organization.

1. If the first board is not named in the articles, the incorporators may elect the first board or may act as directors with all of the powers, rights, duties, and liabilities of directors, until directors are elected or until shares are issued, whichever occurs first.
2. After the issuance of the certificate of incorporation, the incorporators or the directors named in the articles shall, within a reasonable time, either

hold an organizational meeting at the call of a majority of the incorporators or of the directors named in the articles, or take written action, for the purposes of transacting business and taking actions necessary or appropriate to complete the organization of the corporation, including amending the articles, electing directors, adopting bylaws, electing officers, adopting banking resolutions, authorizing or ratifying the purchase, lease, or other acquisition of suitable space, furniture, furnishings, supplies, and materials, approving a corporate seal, approving forms of certificates or transaction statements for shares of the corporation, adopting a fiscal year for the corporation, accepting subscriptions for and issuing shares of the corporation, and making any appropriate tax elections. If a meeting is held, the person or persons calling the meeting shall give at least three days' notice of the meeting to each incorporator or director named, stating the date, time, and place of the meeting. Incorporators and directors may waive notice of an organizational meeting in the same manner that a director may waive notice of meetings of the board pursuant to subsection 5 of section 10-19.1-43.

SECTION 11. AMENDMENT. Section 10-19.1-31 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-31. Bylaws.

1. A corporation may, but need not, have bylaws. Bylaws may contain any provision relating to the management ~~of the business~~ or the regulation of the affairs of the corporation not inconsistent with law or the articles.
2. Initial bylaws may be adopted by the first board or by the incorporators, pursuant to section 10-19.1-30. Unless reserved by the articles to the shareholders, the power to adopt, amend, or repeal the bylaws is vested in the board. The power of the board is subject to the power of the shareholders, exercisable in the manner provided in subsection 3, to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board. After the adoption of the initial bylaws, the board may not adopt, amend, or repeal a bylaw fixing a quorum for meetings of shareholders, prescribing procedures for removing directors or filling vacancies in the board, or fixing the number of directors or their classifications, qualifications, or terms of office, but may adopt or amend a bylaw to increase the number of directors.
3. ~~¶ Unless the articles or bylaws provided otherwise,~~ a shareholder or shareholders holding five percent or more of the voting power of the shares entitled to vote may propose a resolution for action by the shareholders to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board ~~and the~~.
 - a. The resolution ~~sets~~ must set forth the ~~provision or~~ provisions proposed for adoption, amendment, or repeal; ~~the~~.
 - b. The limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in subsections 2, 3, and 4 of section 10-19.1-19, for amendment of the articles.

- c. The provisions of this subsection regarding shareholder proposed amendments shall not apply to a corporation registered or reporting under the federal securities laws, to the extent that those provisions are in conflict with the federal securities laws or rules ~~promulgated thereunder~~, in which case the federal securities laws or rules ~~promulgated thereunder~~ shall govern.
- d. The articles or bylaws may impose different or additional requirements for the shareholders to adopt, amend, or repeal the bylaws.

SECTION 12. AMENDMENT. Section 10-19.1-35 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-35. Terms.

- 1. With respect to length of terms:
 - a. Unless fixed terms are provided for in the articles or bylaws, a director serves for an indefinite term that expires at the next regular meeting of the shareholders.
 - (1) A fixed term of a director, other than an ex officio director, may not exceed five years. ~~A~~
 - (2) An ex officio director serves as long as the director holds the office or position designated in the articles or bylaws.
 - b. Unless the articles or bylaws provide otherwise, a director holds office until expiration of the term for which the director was elected or appointed and until a successor is elected and has qualified, or until the earlier death, resignation, removal, or disqualification of the director.
 - c. A decrease in the number of directors or term of office does not shorten an incumbent director's term.
 - d. Except as provided in the articles or bylaws, the term of a director filling a vacancy expires at the end of the unexpired term that the director is filling.
- 2. The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of office of the groups need not be uniform.

SECTION 13. AMENDMENT. Section 10-19.1-40 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-40. Resignation.

- 1. A director may resign at any time by giving written notice to the corporation. The resignation is effective without acceptance when the notice is given to the corporation, unless a later effective time is specified in the notice.

2. If a resignation is made effective at a later date, the board may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

SECTION 14. AMENDMENT. Section 10-19.1-41 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-41. ~~Removal~~ Nonjudicial removal of directors.

1. The provisions of this section apply unless modified by the articles, the bylaws, or an agreement described in section 10-19.1-83.
2. A director may be removed at any time, with or without cause, if:
 - a. The director was named by the board to fill a vacancy;
 - b. The shareholders have not elected directors in the interval between the time of the appointment to fill a vacancy and the time of the removal; and
 - c. A majority of the remaining directors present affirmatively vote to remove the director.
3. Any one or all of the directors may be removed at any time, with or without cause, by the affirmative vote of the holders of the proportion or number of the voting power of the shares of the classes or series the director represents sufficient to elect them. If less than the entire board is to be removed, no one of the directors may be removed if the votes of a sufficient number of shares are cast against the director's removal which, if then cumulatively voted at an election of the entire board of directors, or, if there be classes of directors, at an election of the class of directors of which the director is a part, would be sufficient to elect the director. Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the articles of incorporation, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.
4. New directors may be elected at a meeting at which directors are removed.

SECTION 15. Section 10-19.1-41.1 of the North Dakota Century Code is created and enacted as follows:

10-19.1-41.1. Removal of directors by judicial proceeding.

1. The district court of the county where the principal executive office of a corporation is located may remove any director of the corporation from office in a proceeding commenced either by the corporation or its shareholders holding at least ten percent of the voting power of any class of shares, if the court finds:
 - a. The director engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion, with respect to the corporation;

- b. A final judgment has been entered finding that the director has violated section 10-19.1-50; and
 - c. Removal is in the best interest of the corporation.
2. The court that removes a director may bar the director from serving on the board for a period prescribed by the court.
3. If the shareholders commence a proceeding under subdivision a, then the corporation shall be made a party defendant.

SECTION 16. AMENDMENT. Section 10-19.1-42 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-42. Vacancies.

1. Unless different rules for filling vacancies are provided for in the articles or bylaws:
 - a. Vacancies on the board resulting from the death, resignation, removal, or disqualification of a director may be filled by the affirmative vote of a majority of the remaining directors, even though the remaining directors constitute less than a quorum; and
 - b. Vacancies on the board resulting from newly created directorships may be filled by the affirmative vote of a majority of the directors serving at the time of the increase.
2. Each director elected under this section to fill a vacancy holds office until a qualified successor is elected by the shareholders at the next regular or special meeting of the shareholders.
3. A vacancy that will occur at a specific later date may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

SECTION 17. AMENDMENT. Section 10-19.1-43 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-43. Board meetings.

1. Meetings of the board may be held from time to time as provided in the articles or bylaws at any place within or without the state that the board may select or by any means described in subsection 2. If the articles, bylaws, or board fails fail to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles or bylaws provide otherwise.
2. A board meeting may be conducted by:
 - a. A conference among directors using any means of communication through which the directors may simultaneously hear each other during the conference ~~constitutes a board meeting~~, if the same notice is given of the conference as would be required by subsection 3 for a meeting, and if the number of directors participating in the conference ~~would be sufficient to constitute~~ is a quorum at a

- ~~meeting.~~ Participation in a meeting by ~~that this~~ means constitutes is personal presence ~~in person~~ at the meeting; or
- b. Any means of communication through which the director, other directors so participating, and all directors physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by ~~that this~~ means constitutes is personal presence ~~in person~~ at the meeting.
 3. Unless the articles or bylaws provide for a different time period, a director may call a board meeting by giving at least ten days' notice or, in the case of organizational meetings pursuant to subsection 2 of section 10-19.1-30, at least three days' notice, to all directors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless the articles or bylaws require it.
 4. If the ~~day or~~ date, time, and place of a board meeting have been provided in the articles or bylaws, or announced at a previous meeting of the board, no notice is required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.
 5. A director may waive notice of a meeting of the board. A waiver of notice by a director entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing or by attendance. Attendance by a director at a meeting is a waiver of notice of that meeting, except where the director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate ~~thereafter~~ after the objection in the meeting.

SECTION 18. AMENDMENT. Section 10-19.1-47 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-47. Action without meeting.

1. An action required or permitted to be taken at a board meeting may be taken by written action signed by all of the directors. If the articles so provide, any action, other than an action requiring shareholder approval, may be taken by written action signed by the number of directors that would be required to take the same action at a meeting of the board at which all directors were present.
2. The written action is effective when signed by the required number of directors, unless a different effective time is provided in the written action.
3. When written action is permitted to be taken by less than all directors, all directors must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A director who does not sign or consent to the written action has no liability for the action or actions ~~taken thereby~~.

SECTION 19. AMENDMENT. Section 10-19.1-48 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-48. Committees.

1. A resolution approved by the affirmative vote of a majority of the board may establish committees having the authority of the board in the management of the business of the corporation only to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent directors or other independent persons to consider legal rights or remedies of the corporation and whether those rights or remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the board.
2. Committee members must be individuals. Unless the articles or bylaws provide for a different membership or manner of appointment, a committee must consist of one or more persons, who need not be directors, appointed by ~~affirmative vote of a majority of the directors present~~ the board.
3. Sections 10-19.1-43, 10-19.1-44, and 10-19.1-45 apply to committees and members of committees to the same extent as those sections apply to the board and directors.
4. Minutes, if any, of committee meetings must be made available upon request to members of the committee and to any director.
5. The establishment of, delegation of authority to, and action by a committee does not alone constitute compliance by a director with the standard of conduct set forth in section 10-19.1-50.
6. Committee members are deemed to be directors for purposes of sections 10-19.1-50, 10-19.1-51, and 10-19.1-91.

SECTION 20. AMENDMENT. Section 10-19.1-50 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-50. Standard of conduct for directors.

1. A director shall discharge the duties of the position of director in good faith, in a manner the director reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a director of the corporation.
2. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:
 - a. One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
 - b. Counsel, public accountants, or other persons as to matters that the director reasonably believes are within the person's professional or expert competence; or

- c. A committee of the board upon which the director does not serve, duly established in accordance with section 10-19.1-48 as to matters within its designated authority, if the director reasonably believes the committee to merit confidence.
 3. Subsection 2 does not apply to a director who has knowledge concerning the matter in question that makes the reliance otherwise permitted by ~~subdivision a~~ subsection 2 unwarranted.
 4. A director who is present at a meeting of the board when an action is approved by the affirmative vote of a majority of the directors present is presumed to have assented to the action approved, unless the director:
 - a. Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate thereafter in the meeting, in which case the director shall not be considered to be present at the meeting for any purpose of this chapter;
 - b. Votes against the action at the meeting; or
 - c. Is prohibited ~~by section 10-19.1-51~~ from voting on the action:
 - (1) By the articles;
 - (2) By the bylaws;
 - (3) As the result of a decision to approve, ratify, or authorize a transaction pursuant to section 10-19.1-51; or
 - (4) By a conflict of interest policy adopted by the board.
 5. A director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles. The articles may not eliminate or limit the liability of a director:
 - a. For any breach of the director's duty of loyalty to the corporation or its shareholders;
 - b. For acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
 - c. Under section 10-19.1-95 or 10-04-17;
 - d. For any transaction from which the director derived an improper personal benefit; or
 - e. For any act or omission occurring prior to the date when the provision in the articles eliminating or limiting liability becomes effective.
 6. In discharging the duties of the position of director, a director may, in considering the best interests of the corporation, consider the interests of the corporation's employees, customers, suppliers, and creditors, the economy of the state and nation, community and societal considerations,

and the long-term as well as the short-term interests of the corporation and its shareholders including the possibility that these interests may be best served by the continued independence of the corporation.

SECTION 21. AMENDMENT. Section 10-19.1-51 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-51. Director conflicts of interest.

1. A contract or other transaction between a corporation and ~~one~~:
 - a. One or more of its directors; or between a corporation and an or a member of the family of a director;
 - b. A director or governor of a related organization, or a member of the family of a director or governor of a related organization; or
 - c. An organization in or of which ~~one or more~~ the corporation's director, or a member of the family of its ~~directors are directors, officers, or legal representatives~~ director, is a director, officer, governor, manager, or representative or ~~have~~ has a material financial interest,

is not void or voidable because the director ~~or directors~~ or the other ~~organizations are parties~~ individual or organization is a party or because the director ~~or directors are~~ is present at the meeting of the shareholders or the board or a committee at which the contract or transaction is authorized, approved, or ratified, if at least one of the requirements of subsection 2 is satisfied.

2. The contract or transaction described in subsection 1 is not void or voidable if:
 - a. The contract or transaction was, and the person asserting the validity of the contract or transaction was, fair and reasonable as to the corporation at the time it was authorized, approved, or ratified;
 - b. The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the shareholders and the contract or transaction is approved in good faith by:
 - (1) The holders of two-thirds of the voting power of the shares entitled to vote which are owned by persons other than the interested director or directors; or
 - (2) The unanimous affirmative vote of the holder of all outstanding shares, whether or not entitled to vote;
 - c. The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board or committee, but the interested director or directors shall not be counted in determining the presence of a quorum and shall not vote; or

- d. The contract or transaction is a distribution described in subsection 1 of section 10-19.1-92 or a merger or exchange described in subsection 1 or 2 of section 10-19.1-96.
2. 3. For purposes of this section:
- a. A director does not have a material financial interest in a resolution fixing the compensation of a director or fixing the compensation of another director as a director, officer, employee, or agent of the corporation, is not void or voidable or considered to be a contract or other transaction between a corporation and one or more of its directors for purposes of this section even though the director receiving the compensation fixed by the resolution is present and voting at the meeting of the board or a committee at which the resolution is authorized, approved, or ratified, or even though other directors voting upon the resolution are also receiving compensation from the corporation; and
- b. A director has a material financial interest in each organization in which the director, or the spouse, parents, children and spouses of children, brothers and sisters and spouses of brothers and sisters, and brothers and sisters of the spouse of a director, or any combination of them have a material financial interest. A contract or other transaction between a corporation and the spouse, parents, children and spouses of children, brothers and sisters, spouses of brothers and sisters, and brothers and sisters of the spouse of a director, or any combination of them, is considered to be a transaction between the corporation and the director or a member of the family of the director, has a material financial interest; and
- c. A "member of the family" of a director is a spouse, parent, child, child of a spouse, brother, sister, or the spouse of any of these.
4. The procedures described under subdivisions a, b, and c of subsection 2 are not required if the contract or other transaction is between related organizations.

SECTION 22. AMENDMENT. Section 10-19.1-52 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-52. Officers. The officers of a corporation must be individuals who are eighteen years of age or more and shall consist of a president, one or more vice presidents as may be prescribed by the bylaws, a secretary, and a treasurer; each and may also include one or more vice presidents and any other officers or agents as may be prescribed by the bylaws. Each of whom the officers must be elected by the board at such a time and in such a manner as may be provided in the bylaws unless the articles or bylaws provide that the shareholders may elect the officers.

SECTION 23. AMENDMENT. Section 10-19.1-53 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-53. Duties of officers and agents. Unless the articles, bylaws, or a resolution adopted by the board and not inconsistent with the articles or bylaws, provides otherwise, the officers shall have the following duties.

1. The president shall:

- a. Have general active management for the business of the corporation;
 - b. When present, preside at all meetings of the board and of shareholders;
 - c. See that all orders and resolutions of the board are carried into effect;
 - d. Sign and deliver in the name of the corporation, any deeds, mortgages, bonds, contracts, or other instruments pertaining to the business of the corporation, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the articles or bylaws or by the board to some officer or agent of the corporation;
 - e. Maintain records of and, whenever necessary, certify all proceedings of the board and the shareholders; and
 - f. Perform other duties prescribed by the board.
2. The vice president, if any, or, if there is more than one, the vice presidents in the order determined by the board, shall:
- a. In the absence or disability of the president, perform the duties and exercise the powers of the president; and
 - b. Shall perform other duties and shall have other powers as the board may from time to time prescribe.
3. The treasurer shall:
- a. Keep accurate financial records for the corporation;
 - b. Deposit all money, drafts, and checks in the name of and to the credit of the corporation in the banks and depositories designated by the board;
 - c. Endorse for deposit all notes, checks, and drafts received by the corporation as ordered by the board, making proper vouchers;
 - d. Disburse corporate funds and issue checks and drafts in the name of the corporation, as ordered by the board;
 - e. Give to the president and the board, whenever requested, an account of all transactions by the treasurer and of the financial condition of the corporation; and
 - f. Perform other duties prescribed by the board or by the president.
4. The secretary shall:
- a. Attend all meetings of the board, all meetings of the shareholders, and when required, all meetings of standing committees;
 - b. Record all proceedings of the meetings;

- c. Give, or cause to be given, notice of all meetings of the shareholders and meetings of the board; and
 - d. Perform other duties prescribed by the board.
3. 5. All other officers and agents of the corporation, as between themselves and the corporation, have the authority and shall perform the duties in the management of the corporation as may be provided in the articles or bylaws, or as may be determined by resolution of the board not inconsistent with the articles and bylaws.

SECTION 24. AMENDMENT. Section 10-19.1-55 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-55. Multiple offices. Any number of offices or functions of those offices may be held or exercised by the same ~~person~~ individual. If a document must be signed by ~~persons~~ individuals holding different offices or functions and a ~~person~~ an individual holds or exercises more than one of those offices or functions, that ~~person~~ individual may sign the document in more than one capacity, but only if the document indicates each capacity in which the ~~person~~ individual signs.

SECTION 25. AMENDMENT. Section 10-19.1-56 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-56. Officers deemed elected. In the absence of an election or appointment of officers by the board, the ~~person~~ individual or ~~persons~~ individuals exercising the functions of the principal officers of the corporation are deemed to have been elected to those offices.

SECTION 26. AMENDMENT. Section 10-19.1-57 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-57. Contract rights. The election or appointment of a ~~person~~ an individual as an officer or agent does not, of itself, create contract rights. However, a corporation may enter into a contract with an officer or agent. The resignation or removal of an officer or agent is without prejudice to any contractual rights or obligations. The fact that the contract may be for a term that is longer than the terms of the directors who authorized or approved the contract does not make the contract void or voidable.

SECTION 27. AMENDMENT. Section 10-19.1-58 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-58. Resignation - Removal - Vacancies.

1. An officer may resign at any time by giving written notice to the corporation. The resignation is effective without acceptance when the notice is given to the corporation, unless a later effective date is specified in the notice.
2. ~~An~~ Except as otherwise provided in the articles and bylaws, an officer may be removed at any time, with or without cause, by a resolution approved by the affirmative vote of a majority of the directors present, subject to the provisions of a shareholder control agreement. The removal is without prejudice to any contractual rights of the officer.

3. A vacancy in an office because of death, resignation, removal, disqualification, or other cause may, or in the case of the president or treasurer must, be filled for the unexpired portion of the term in the manner provided in the articles or bylaws, or determined by the board, or pursuant to section 10-19.1-56.

SECTION 28. AMENDMENT. Section 10-19.1-59 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-59. Delegation. Unless prohibited by the articles or bylaws or by a resolution ~~approved by the affirmative vote of a majority of the directors present adopted by the board~~, an officer elected or appointed by the board may, without the approval of the board, delegate some or all of the duties and powers of an office to other ~~persons~~ individuals. An officer who delegates the duties or powers of an office remains subject to the standard of conduct for an officer with respect to the discharge of all duties and powers so delegated.

SECTION 29. AMENDMENT. Section 10-19.1-60 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-60. Standard of conduct for officers. An officer shall discharge the duties of an office in good faith, in a manner the officer reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. ~~A person~~ An individual exercising the principal functions of an office or to whom some or all of the duties and powers of an office are delegated pursuant to section 10-19.1-59 is deemed an officer for purposes of this section and sections 10-19.1-86 and 10-19.1-91.

SECTION 30. AMENDMENT. Section 10-19.1-66 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-66. Share certificates - Issuance and contents - Uncertificated shares.

1. The shares of a corporation must be represented by certificates signed by the president, or by a vice president, and by the secretary, or by an assistant secretary of the corporation.
2. If a person signs or has a facsimile signature placed upon a certificate while an officer, transfer agent, or registrar of a corporation, the certificate may be issued by the corporation, even if the person has ceased to have that capacity before the certificate is issued, with the same effect as if the person had that capacity at the date of its issue.
3. Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class must set forth upon the face or back of the certificate, or must state that the corporation will furnish to any shareholders upon request and without charge, a full or summary statement of the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued and, if the corporation is authorized to issue any preferred or special class or series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board to fix and determine the

relative rights and preferences of subsequent series. Each certificate representing shares must state upon its face:

- a. The name of the corporation.
 - b. That the corporation is organized under the laws of this state.
 - c. The name of the person to whom issued.
 - d. The number and class of shares, and the designation of the series, if any, which such certificate represents.
 - e. The par value of such share represented by such certificate, or a statement that the shares are without par value.
4. A certificate signed as provided in subsection 1 is prima facie evidence of the ownership of the shares referred to in the certificate.
5. Unless uncertificated shares are prohibited by the articles or bylaws, a resolution approved by the affirmative vote of a majority of the directors present may provide that some or all of any, or all classes and series of its shares will be uncertificated shares.
- a. The resolution does not apply to shares represented by a certificate until the certificate is surrendered to the corporation.
 - b. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the new shareholder the information required by this section to be stated on certificates.
 - c. Except as otherwise expressly provided by statute, the rights and obligations of the holders of certificated and uncertificated shares of the same class and series are identical.

SECTION 31. AMENDMENT. Section 10-19.1-71 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-71. Regular meetings of shareholders.

1. Regular meetings of shareholders may be held on an annual or other less frequent periodic basis, but need not be held unless required by the articles or bylaws or by subsection 2.
2. If a regular meeting of shareholders has not been held during the immediately preceding ~~earlier~~ earlier of six months after the fiscal year end of the corporation or fifteen months; a after its last meeting:
 - a. A shareholder or shareholders holding five percent or more of the voting power of all shares entitled to vote may demand a regular meeting of shareholders by written notice of demand given to the president or secretary of the corporation.
 - b. Within thirty days after receipt of the demand by one of those officers, the board shall cause a regular meeting of shareholders to

be called and held at the expense of the corporation on notice no later than ninety days after receipt of the demand.

- c. If the board fails to cause a regular meeting to be called as required by this subsection, the ~~shareholder or~~ shareholders making the demand may call the ~~regular~~ meeting by giving notice as required by section 10-19.1-73.
 - d. All necessary expenses of the notice and the meeting must be paid by the corporation.
3. A regular meeting, if any, must be held on the ~~day or~~ date and at the time and place fixed by, or in a manner authorized by, the articles or bylaws, except that a meeting called by or at the demand of a shareholder pursuant to subsection 2 must be held in the county where the principal executive office of the corporation is located.
4. At each regular meeting of shareholders ~~there:~~
 - a. There must be an election of qualified successors for directors who serve for an indefinite term or whose terms have expired or are due to expire within six months after the date of the meeting.
 - b. No other particular business is required to be transacted ~~at a regular meeting.~~
 - c. Any business appropriate for action by the shareholders may be transacted ~~at a regular meeting.~~
5. Failure to hold a meeting in accordance with the articles or bylaws does not affect the validity of a corporate action.

SECTION 32. AMENDMENT. Section 10-19.1-72 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-72. Special meetings of shareholders.

1. Special meetings of the shareholders may be called for any purpose or purposes at any time, by:
 - a. The president;
 - b. Two or more directors;
 - c. A person authorized in the articles or bylaws to call special meetings; or
 - d. A shareholder or shareholders holding ten percent or more of the voting power of all shares entitled to vote, except that a special meeting for the purpose of considering any action to directly or indirectly facilitate or effect a business combination, including any action to change or otherwise affect the composition of the board of directors for that purpose, must be called by twenty-five percent or more of the voting power of all shares entitled to vote.

2. A shareholder or shareholders holding the voting power specified in subdivision d of subsection 1 may demand a special meeting of shareholders by written notice of demand given to the president or secretary of the corporation and containing the purposes of the meeting.
 - a. Within thirty days after receipt by one of those officers of the demand, the board shall cause a special meeting of shareholders to be called and held on notice no later than ninety days after receipt of the demand.
 - b. If the board fails to cause a special meeting to be called as required by this subsection, the shareholder or shareholders making the demand may call the special meeting by giving notice as required by section 10-19.1-73.
 - c. All necessary expenses of the notice and the meeting shall be paid by the corporation.
3. Special meetings must be held on the date and at the time and place fixed by the president, the board, or a person authorized by the articles or bylaws to call a meeting, except that a special meeting called by or at the demand of a shareholder or shareholders pursuant to subsection 2 must be held in the county where the principal executive office is located.
4. The business transacted at a special meeting is limited to the purposes stated in the notice of the meeting. Any business transacted at a special meeting that is not included in those stated purposes is voidable by or on behalf of the corporation, unless all of the shareholders have waived notice of the meeting in accordance with subsection 4 of section 10-19.1-73.

SECTION 33. Section 10-19.1-72.1 of the North Dakota Century Code is created and enacted as follows:

10-19.1-72.1. Court-ordered meeting of shareholders.

1. The district court of the county where the principal executive office of a corporation is located may order a meeting to be held:
 - a. On application of a shareholder or shareholders holding five percent or more of the voting power of all shares entitled to vote, if a meeting was not held within the earlier of:
 - (1) Six months after the fiscal yearend of the corporation; or
 - (2) Fifteen months after its last meeting; or
 - b. On application of a voting shareholder who signed a demand for a special meeting valid under section 10-19.1-72 or a person entitled to call a special meeting if:
 - (1) Notice of the special meeting was not given within thirty days after the date the demand was delivered to a corporate officer; or

- (2) The special meeting was not held in accordance with the notice.
2. The court may:
- a. Fix the time and place of the meeting;
 - b. Specify a record date for determining shareholders entitled to notice of and to vote at the meeting;
 - c. Prescribe the form and content of the meeting notice;
 - d. Fix the quorum required for specific matters to be considered at the meeting, or direct that the votes represented at the meeting constitute a quorum for action on those matters; and
 - e. Enter other orders necessary to accomplish the purposes of the meeting.
3. If the court orders a meeting it may also order the corporation to pay the costs of the shareholder, including reasonable attorneys' fees, incurred to obtain the order.

SECTION 34. AMENDMENT. Section 10-19.1-73 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-73. Notice.

1. Except as otherwise provided in this chapter, notice of all meetings of shareholders must be given to every holder of shares entitled to vote unless:
 - a. The meeting is an adjourned meeting to be held not more than one hundred twenty days after the date fixed for the original meeting and the date, time, and place of the meeting were announced at the time of the original meeting or any adjournment of the original meeting; or
 - b. The following have been mailed by first-class mail to a shareholder at the address in the corporate records and returned nondeliverable:
 - (1) Two consecutive annual meeting notices and notices of any special meetings held during the period between the two annual meetings; or
 - (2) All payments of ~~dividends~~ distributions, provided there were at least two sent during a twelve-month period.

An action or meeting that is taken or held without notice under subdivision b has the same force and effect as if notice was given. If the shareholder delivers a written notice of the shareholder's current address to the corporation, the notice requirement is reinstated.

2. If notice of an adjourned meeting is required under subdivision a of subsection 1, then the date for determination of shares entitled to notice

of and entitled to vote at the adjourned meeting must comply with subsection 1 of section ~~40-19.1-77~~ 10-19.1-73.2, except that if the date of the meeting is set by court order, the court may provide that the original date of determination will continue in effect or may fix a new date.

3. # The notice:
 - a. In all instances where a specific minimum notice period has not otherwise been fixed by law, the notice must be given at least ten days before the date of the meeting, or a shorter time provided in the articles or bylaws, and not more than fifty days before the date of the meeting;_i
 4. b. The notice must Must contain the date, time, and place of the meeting;_i
 - c. Must contain the information with respect to dissenters' rights required by subsection 2 of section 10-19.1-88, if applicable; and any other information required by this chapter. In the case of a special meeting, the notice must contain a statement of the purposes of the meeting. The notice may also contain any other information required by the articles or bylaws or deemed necessary or desirable by the board or by any other person or persons calling the meeting;_i
 - d. Must inform shareholders if proxies are permitted at the meeting and, if so, state the procedure for appointing proxies;
 - e. Must contain a statement of the purpose of the meeting, in the case of a special meeting;
 - f. Must contain any other information:
 - (1) Required by the articles or bylaws, or this chapter;
 - (2) Considered necessary or desirable by the board of directors;
and
 - g. May contain any other information considered necessary or desirable by the person or persons calling the meeting.
5. 4. A shareholder may waive notice of a meeting of shareholders.
 - a. A waiver of notice by a shareholder entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, or by attendance.
 - b. Attendance by a shareholder at a meeting is a waiver of notice of that meeting, except where the shareholder objects ~~at~~:
 - (1) At the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened;_i or
objects before

- (2) Before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

SECTION 35. Section 10-19.1-73.2 of the North Dakota Century Code is created and enacted as follows:

10-19.1-73.2. Voting rights.

1. The board may fix a date not more than fifty days, or a shorter time period provided in the articles or bylaws, before the date of a meeting of shareholders as the date for the determination of the holders of shares entitled to notice of and entitled to vote at the meeting. When a date is fixed, only shareholders on that date are entitled to notice of and permitted to vote at that meeting of shareholders.
2. A determination of the holders of shares entitled to notice and to vote at a meeting of shareholders is effective for an adjournment of the meeting unless the board fixes a new date for determining the right to notice and to vote, which it must do if the meeting is adjourned to a date more than fifty days after the record date for determining shareholders entitled to notice of the original meeting.
3. If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may:
 - a. Maintain the original record date for notice and voting; or
 - b. Fix a new record date for notice and voting.
4. A resolution approved by the affirmative vote of a majority of the directors present may establish a procedure whereby a shareholder may certify in writing to the corporation that all or a portion of the shares registered in the name of the shareholder are held for the account of one or more beneficial owners. Upon receipt by the corporation of the writing, the persons specified as beneficial owners, rather than the actual shareholder, are deemed the shareholders for the purposes specified in the writing.
5. Unless otherwise provided in the articles or bylaws, or in the terms of the shares, a shareholder has one vote for each share held.
6. The articles may give or prescribe the manner of giving a creditor, securityholder, or other person a right to vote under this section.
7. Shares owned by two or more shareholders may be voted by any one of them unless the corporation receives written notice from any one of them denying the authority of that person to vote those shares.
8. Except as provided in subsection 7, a holder of shares entitled to vote may vote any portion of the shares in any way the shareholder chooses. If a shareholder votes without designating the proportion or number of shares voted in a particular way, the shareholder is deemed to have voted all of the shares in that way.

SECTION 36. Section 10-19.1-73.3 of the North Dakota Century Code is created and enacted as follows:

10-19.1-73.3. Voting list.

1. After fixing a record date for notice of and voting at a meeting, a corporation shall prepare an alphabetical list of the names of its shareholders entitled to notice and to vote. The list must show the address and number of shares each shareholder is entitled to vote at the meeting.
2. The list of shareholders must be available for inspection by a shareholder with voting rights for the purpose of communication with other shareholders concerning the meeting, beginning two business days after the meeting notice is given and continuing through the meeting, at the principal executive office of the corporation or at a reasonable place identified in the meeting notice in the city where the meeting will be held.

 - a. The list must also be available at the meeting.
 - b. A shareholder, a shareholder's agent, or attorney is entitled on written demand to inspect and to copy the list, at a reasonable time and at the shareholder's expense, during the period it is available for inspection and at any time during the meeting or an adjournment.
3. If the corporation refuses to allow a shareholder with voting rights, the shareholder's agent, or attorney to inspect the list of shareholders before or at the meeting, the district court of the county where the principal executive office of the corporation is located, on application of the shareholder, may:

 - a. Order the inspection or copying at the corporation's expense;
 - b. Postpone the meeting until the inspection or copying is complete; or
 - c. Order the corporation to pay the shareholder's costs, including reasonable attorneys' fees, incurred to obtain the order.
4. Unless a written demand to inspect and copy a shareholder list has been made under subsection 2 before the shareholder meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.
5. A shareholder, agent, or attorney who gains access to a shareholder list under this section may not use or give it to another for use of the shareholder list for any purpose other than a proper purpose. Upon application of the corporation, the district court may issue a protective order or order other relief necessary to enforce this subsection.

SECTION 37. AMENDMENT. Section 10-19.1-74 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-74. Act of the shareholders.

1. ~~The~~ Unless this chapter or the articles require a greater vote or voting by class, the shareholders shall take action by the affirmative vote of the holders of the greater of:
 - a. A majority of the voting power of the shares present and entitled to vote on that item of business; or
 - b. A majority of the voting power of the minimum number of shares entitled to vote that would constitute a quorum for the transaction of business at the meeting; ~~except where this chapter or the articles require a larger proportion or number.~~

If the articles require a larger proportion or number than is required by this chapter for a particular action, the articles control.

2. ~~In any case where a class or series of shares is entitled by this chapter, the articles, the bylaws, or the terms of the shares to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the holders of the same proportion of the shares present of that class or series as is required pursuant to subsection 4, unless the articles require a larger proportion. Unless otherwise stated in the articles or bylaws in the case of voting as a class or series, the minimum percentage of the number of shares of the class or series which must be present shall be equal to the minimum percentage of all outstanding shares entitled to vote required to be present under section 10-19.1-76. Unless otherwise provided in the articles or bylaws, shareholders may take action at a meeting by:~~
 - a. Voice or ballot;
 - b. Action without a meeting pursuant to section 10-19.1-75;
 - c. Written ballot pursuant to section 10-19.1-75.1; or
 - d. Electronic communication pursuant to section 10-19.1-75.2.

SECTION 38. AMENDMENT. Section 10-19.1-75 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-75. Action without a meeting. An action required or permitted to be taken at a meeting of the shareholders may be taken without a meeting by written action signed by all of the shareholders entitled to vote on that action.

1. If the articles so provide, any action may be taken by written action signed by the shareholders who own voting power equal to the voting power that would be required to take the same action at a meeting of the shareholders at which all shareholders were present.
2. The written action is effective when it has been signed by all of those the required shareholders, unless a different effective time is provided in the written action.
3. When written action is permitted to be taken by less than all shareholders, all shareholders must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A shareholder who does not sign or consent to the

written action has no liability for the action or actions taken by the written actions.

4. When this chapter requires or permits a certificate concerning an action to be filed with the secretary of state, the officers signing the certificate must indicate the action was taken under this section.

SECTION 39. Section 10-19.1-75.1 of the North Dakota Century Code is created and enacted as follows:

10-19.1-75.1. Action by written ballot.

1. Except as provided in subsection 5 and unless prohibited or limited by the articles or bylaws, an action that may be taken at a regular or special meeting of shareholders may be taken without a meeting if the corporation mails or delivers a written ballot to every shareholder entitled to vote on the matter.
2. A written ballot must set forth each proposed action and provide an opportunity to vote for or against each proposed action.
3. Approval by written ballot under this section is valid only if:
 - a. The number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action; and
 - b. The number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.
4. Solicitations for votes by written ballot must:
 - a. Indicate the number of responses needed to meet the quorum requirements;
 - b. State the percentage of approvals necessary to approve each matter other than election of directors; and
 - c. Specify the time by which a ballot must be received by the corporation in order to be counted.
5. Except as otherwise provided in the articles or bylaws, a written ballot may not be revoked.

SECTION 40. Section 10-19.1-75.2 of the North Dakota Century Code is created and enacted as follows:

10-19.1-75.2. Electronic communications.

1. A conference among the shareholders by any means of communication through which the participants may simultaneously hear each other during the conference constitutes a regular or special meeting of shareholders:

- a. If the same notice is given of the conference as would be required for a meeting; and
 - b. If the number of shares held by the shareholders participating in the conference would be sufficient to constitute a quorum at a meeting.
2. Participation in a conference meeting the requirements of subsection 1 constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-19.1-80 are met.
3. A shareholder may participate in a regular or special meeting of shareholders not described in subsection 1 by any means of communication through which the shareholder, other participants, and all persons physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-19.1-80 are met.
4. Waiver of notice of a meeting by means of communication described in subsection 1 or 3 may be given in the manner provided in subsection 4 of section 10-19.1-73. Participation in a meeting by means of communications described in subsection 1 or 3 is a waiver of notice of that meeting, except where the shareholder objects:
 - a. At the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened; or
 - b. Before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

SECTION 41. AMENDMENT. Section 10-19.1-76 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-76. Quorum. ~~The~~

1. Unless otherwise provided in the articles or bylaws, a quorum for a meeting of shareholders is the holders of a majority of the voting power of the shares entitled to vote at a the meeting are a quorum for the transaction of business, unless a larger or smaller proportion or number is provided in the articles or bylaws. In no event may a quorum consist of less than one-third of the shares entitled to vote at the meeting. If a quorum is present when a duly called or held meeting is convened, the shareholders present may continue to transact business until adjournment, even though the withdrawal of a number of shareholders originally present leaves less than the proportion or number otherwise required for a quorum.
2. Except as provided in subdivision b, a quorum is necessary for the transaction of business at a meeting of shareholders.
 - a. If a quorum is not present, a meeting may be adjourned from time to time for that reason.
 - b. If a quorum has been present at a meeting and shareholders have withdrawn from the meeting so that less than a quorum remains,

the shareholders still present may continue to transact business until adjournment.

SECTION 42. Section 10-19.1-76.1 of the North Dakota Century Code is created and enacted as follows:

10-19.1-76.1. Voting of shares by organizations and legal representatives.

1. Shares of a corporation registered in the name of another domestic or foreign corporation may be voted by the president or other legal representative of the corporation.
2. Except as provided in subsection 3, shares of a corporation registered in the name of a subsidiary are not entitled to be voted on any matter.
3. Shares of a corporation in the name of or under the control of the corporation or a subsidiary in a fiduciary capacity are not entitled to be voted on any matter, except to the extent that the settlor or beneficial owner possesses and exercises a right to vote or gives the corporation or, with respect to shares in the name of or under control of a subsidiary, the subsidiary, binding instructions on how to vote the shares.
4. Shares under the control of a person in a capacity as a personal representative, an administrator, executor, guardian, conservator, or attorney in fact may be voted by the person, either in person or by proxy, without registration of those shares in the name of the person. Shares registered in the name of a trustee of a trust or in the name of a custodian may be voted by the person, either in person or by proxy, but a trustee of a trust or a custodian may not vote shares held by the person unless they are registered in the name of the person.
5. Shares registered in the name of a trustee in bankruptcy or a receiver may be voted by the trustee or either in person or by proxy. Shares under the control of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver without registering the shares in the name of the trustee or receiver, if authority to do so is contained in an appropriate order of the court by which the trustee or receiver was appointed.
6. Shares registered in the name of an organization not described in subsections 1 through 5 may be voted either in person or by proxy by the legal representative of that organization.
7. A shareholder whose shares are pledged may vote those shares until the shares are registered in the name of the pledgee. If the corporation pledges its own shares under subsection 1 of section 10-19.1-93, the corporation may not vote the shares at a meeting or otherwise.

SECTION 43. Section 10-19.1-76.2 of the North Dakota Century Code is created and enacted as follows:

10-19.1-76.2. Proxies.

1. At or before the meeting the appointment is to be effective a shareholder may cast or authorize the casting of a vote by filing a written appointment of a proxy with an officer authorized to tabulate votes.

- a. A written appointment of a proxy may be signed by the shareholder or authorized by the shareholder by transmission of a telegraph, cablegram, or other means of electronic transmission, provided the corporation has no reason to believe the telegram, cablegram, or other electronic transmission was not authorized by the shareholder.
 - b. Any reproduction of the writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original transmission could be used, if the copy, facsimile, telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission.
 - c. An appointment of a proxy for shares held jointly by two or more shareholders is valid if signed by any one of them, unless the corporation receives from any one of those shareholders written notice either denying the authority of that person to appoint a proxy or appointing a different proxy.
 2. The appointment of a proxy is valid for eleven months, unless a longer period is expressly provided in the appointment. No appointment is irrevocable unless the appointment is coupled with an interest, including a security interest, in the shares or in the corporation. A shareholder who revokes a proxy is not liable in any way for damages, restitution, or other claim.
 3. An appointment may be revoked at will, unless the appointment is coupled with an interest, in which case it may not be revoked except in accordance with the terms of an agreement, if any, between the parties to the appointment. Appointment of a proxy is revoked by the person appointing the proxy by:
 - a. Attending a meeting and voting in person; or
 - b. Signing and delivering to the officer or agent authorized to tabulate proxy votes either:
 - (1) A writing stating the appointment of the proxy is revoked; or
 - (2) A later appointment.
 4. Revocation in either manner provided in subsection 3 revokes all earlier proxy appointments and is effective when filed with an officer of the corporation.
 5. The death or incapacity of a person appointing a proxy does not affect the right of the corporation to accept the authority of the proxy, unless written notice of the death or incapacity is received by an officer authorized to tabulate votes before the proxy exercises authority under that appointment.
 6. Unless the appointment specifically provides otherwise, if two or more persons are appointed as proxies for a shareholder:

- a. Any one of them may vote the shares on each item of business in accordance with specific instructions contained in the appointment; and
 - b. If no specific instructions are contained in the appointment with respect to voting the shares on a particular item of business, the shares must be voted as a majority of the proxies determine. If the proxies are equally divided, the shares may not be voted.
7. Subject to section 10-19.1-76.3 and an express restriction, limitation, or specific reservation of authority of the proxy appearing on the appointment, the corporation may accept a vote or action by the proxy as the action of the shareholder. The vote of a proxy is final, binding, and not subject to challenge, but the proxy is liable to the shareholder or beneficial owner for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment.
8. If a proxy is given authority by a shareholder to vote on less than all items of business considered at a meeting of shareholders, the shareholder is considered to be present and entitled to vote by the proxy for purposes of subsection 1 of section 10-19.1-74, only with respect to those items of business for which the proxy has authority to vote. A proxy who is given authority by a shareholder who abstains with respect to an item of business is considered to have authority to vote on the item of business for purposes of this subsection.

SECTION 44. Section 10-19.1-76.3 of the North Dakota Century Code is created and enacted as follows:

10-19.1-76.3. Acceptance of shareholder act by the corporation.

1. If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the record name of a shareholder, the corporation if acting in good faith may accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.
2. Unless the articles or bylaws provide otherwise, if the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name of a shareholder, the corporation if acting in good faith may accept the vote, consent waiver, or proxy appointment and give it effect as the act of the shareholder if:
 - a. The shareholder is an organization and the name signed purports to be that of an officer, manager, or agent of the organization;
 - b. The name signed purports to be that of an administrator, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;
 - c. The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder, and, if the corporation requests, evidence of this status acceptable to the corporation has been

- presented with respect to the vote, consent, waiver, or proxy appointment;
- d. The name signed purports to be that of a pledgee, beneficial owner, or attorney in fact of the shareholder, and if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment; or
 - e. Two or more persons hold the shares as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coholders and the person signing appears to be acting on behalf of all the coholders.
3. The corporation may reject a vote, consent, waiver, or proxy appointment if the officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.
 4. The corporation or its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section is not liable in damages to the shareholder for the consequences of the acceptance or rejection.
 5. Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

SECTION 45. AMENDMENT. Section 10-19.1-81 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-81. Voting trusts.

1. Shares in a corporation may be transferred to a trustee pursuant to written agreement, for the purpose of conferring on the trustee the right to vote and otherwise represent the beneficial owner of those shares for a period not exceeding ten years, except that if the agreement is made in connection with an indebtedness of the corporation, the voting trust may extend until the indebtedness is discharged. Unless otherwise specified in the agreement, the voting trust may be terminated at any time by the beneficial owners of a majority of the voting power of the shares held by the trustee. A signed original of the agreement must be filed with the corporation.
2. Unless otherwise provided in the trust agreement, if there are two or more trustees, the manner of voting is determined as provided in subsection 5 of section ~~10-19.1-77~~ 10-19.1-73.2.

SECTION 46. AMENDMENT. Section 10-19.1-82 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-82. Shareholder voting agreements. A written agreement solely among persons who are then shareholders or subscribers for shares to be issued, relating to the voting of their shares, is valid and specifically enforceable by and against the parties to the agreement. The agreement may override the provisions of

section ~~40-19.1-80~~ 10-19.1-76.2 regarding proxies and is not subject to the provisions of section ~~40-19.1-81~~ 10-19.1-73.2 regarding voting trusts.

SECTION 47. AMENDMENT. Section 10-19.1-83 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-83. Shareholder control agreements.

1. A written agreement solely among the shareholders of a corporation and the subscribers for shares to be issued, relating to the control of any phase of the business and affairs of the corporation, its liquidation and dissolution, or the relations among shareholders of or subscribers to shares of the corporation is valid and specifically enforceable as provided in subsections 2 and 3.
2. A written agreement ~~solely~~ among persons described in subsection 1 which relates to the control of or the liquidation and dissolution of the corporation, the relations among them, or any phase of the business and affairs of the corporation, including the management of its business, the declaration and payment of distributions, the election of directors or officers, the employment of shareholders by the corporation, or the arbitration of disputes, is valid and specifically enforceable, if the agreement is signed by all persons who are then the shareholders of the corporation, whether or not the shareholders all have voting shares, and the subscribers for shares, whether or not voting shares, to be issued.
3. The agreement is enforceable by the persons described in subsection 1 who are parties to it and is binding upon and enforceable against only those persons and other persons having knowledge of the existence of the agreement. A signed original of the agreement must be filed with the corporation. The existence and location of a copy of the agreement must be noted conspicuously on the face or back of each certificate for shares issued by the corporation and on each transaction statement. A shareholder, a beneficial owner of shares, or another person having a security interest in shares has the right upon written demand to obtain a copy of the agreement from the corporation at the expense of the corporation.
4. ~~The effect of an agreement authorized by this section is to relieve the board and the director or directors in their capacities as directors of, and to impose upon the parties to the agreement, the liability for acts or omissions imposed by law upon directors to the extent that and so long as the discretion or powers of the directors in the management of the business and affairs of the corporation are exercised by the shareholders under a provision in the agreement. If an agreement authorized by this section takes away from any person any of the authority and responsibility which that person would otherwise possess under this chapter, the effect of the agreement is also:~~
 - a. To relieve that person of liability imposed by law for acts and omissions in the possession or exercise of that authority and responsibility; and
 - b. To impose that liability on the person or persons possessing the authority and responsibility under the agreement.

5. A shareholder is not liable pursuant to ~~this~~ subsection 4 by virtue of a shareholder vote, if the shareholder had no right to vote on the action.
- ~~5.~~ 6. This section does not apply to, limit, or restrict agreements otherwise valid, nor is the procedure set forth in this section the exclusive method of agreement among shareholders or between the shareholders and the corporation with respect to any of the matters described in this section.

SECTION 48. AMENDMENT. Section 10-19.1-85 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-85. Financial statements.

1. A corporation shall, upon the written request of a shareholder, prepare annual financial statements within one hundred eighty days after the close of the corporation's fiscal year: ~~The financial statements shall include~~ including at least a balance sheet as of the end of ~~each~~ the fiscal year and a statement of income for the fiscal year, ~~which must be prepared on the basis of accounting methods reasonable in the circumstances and.~~ The financial statements may be consolidated statements of the corporation and one or more of its subsidiaries.
- a. ~~In the case of~~ If the statements are audited by a public accountant, each copy must be accompanied by a report setting forth the opinion of the accountant on the statements; ~~in other cases,~~
- b. If these statements are not audited by a public accountant, each copy must be accompanied by a statement of the treasurer or other person in charge of the corporation's financial records stating:
- (1) Stating the reasonable belief of the person that the financial statements were prepared in accordance with accounting methods reasonable in the circumstances; ~~describing;~~
- (2) Describing the basis of presentation; ~~and describing~~
- (3) Describing any respects in which the financial statements were not prepared on a basis consistent with those prepared for the previous year.
2. Upon written request by a shareholder, a corporation shall furnish its most recent annual financial statements as required under subsection 1 no later than ten business days after receipt of a shareholder's written request. "Furnish" for purposes of this subsection means that the corporation shall deliver or mail, postage prepaid, the financial statements to the address specified by the requesting shareholder.

SECTION 49. Section 10-19.1-85.1 of the North Dakota Century Code is created and enacted as follows:

10-19.1-85.1. Equitable remedies. If a corporation or an officer or director of the corporation violates this chapter, a court in this state, in an action brought by a shareholder of the corporation may grant equitable relief it considers just and reasonable in the circumstances and award expenses, including attorneys' fees and disbursements, to the shareholders.

SECTION 50. AMENDMENT. Section 10-19.1-86 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-86. Actions by shareholders. No action may be brought in this state by a shareholder in the right of a domestic or foreign corporation unless plaintiff is a holder of record of shares or voting trust certificates at the time of the transaction of which plaintiff complains, or the plaintiff's shares or voting trust certificates thereafter devolved upon the plaintiff by operation of law from a person who was a holder of record at such time:

1. In any action thereafter instituted in the right of any domestic or foreign corporation by the holder or holders of record of shares of the corporation or voting trust certificates, the court having jurisdiction, upon final judgment and finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay the parties named as defendant the reasonable expenses, including fees of attorneys, incurred by them in defense of such action.
2. In any action now pending or hereafter instituted or maintained in the right of any domestic or foreign corporation by the holder or holders of record of less than five percent of the outstanding shares of any class of the corporation or voting trust certificates, unless the shares or voting trust certificates so held have a market value in excess of twenty-five thousand dollars, the corporation in whose right such action is brought is entitled at any time before final judgment to require the plaintiff or plaintiffs to give security for the reasonable expenses, including fees of attorneys, that may be incurred by it in connection with such action or may be incurred by other parties named as defendant for which it may become legally liable.
 - a. Market value must be determined on the date the plaintiff institutes the action or, in the case of an intervenor, on the date the intervenor becomes a party to the action.
 - b. The amount of the security may from time to time be increased or decreased, in the discretion of the court, upon showing that the security provided has or may become inadequate or is excessive.
 - c. The corporation has recourse to such security in such amount as the court having jurisdiction determines upon the termination of the action, whether or not the court finds the action was brought without reasonable cause.

SECTION 51. AMENDMENT. Section 10-19.1-87 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-87. Rights of dissenting shareholders.

1. A shareholder of a corporation may dissent from, and obtain payment for the fair value of the shareholder's shares in the event of, any of the following corporate actions:
 - a. An amendment of the articles that materially and adversely affects the rights or preferences of the shares of a dissenting shareholder in that it:

- (1) Alters or abolishes a preferential right of the shares;
 - (2) Creates, alters, or abolishes a right in respect of the redemption of the shares, including a provision respecting a sinking fund for the redemption or repurchase of shares;
 - (3) Alters or abolishes a preemptive right of the holder of the shares to acquire shares, securities other than shares, or rights to purchase shares or securities other than shares; or
 - (4) Excludes or limits the right of a shareholder to vote on a matter, or to accumulate votes, except as the right may be excluded or limited through the authorization or issuance of securities of an existing or new class or series with similar or different voting rights;
- b. A sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation ~~not made in the usual or regular course of its business~~, but not including a transaction permitted without shareholder approval in subsection 1 of section 10-19.1-104, or a disposition in dissolution described in subsection 2 of section 10-19.1-109 or a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the shareholders in accordance with their respective interests within one year after the date of disposition;
 - c. A plan of merger to which the corporation is a party, except as provided in subsection 3;
 - d. A plan of exchange, whether under this chapter or under chapter 10-32, to which the corporation is a party as the corporation whose shares will be acquired by the acquiring corporation, if the shares of the shareholder are entitled to vote on the plan; or
 - e. Any other corporate action taken pursuant to a shareholder vote with respect to which the articles, the bylaws, or a resolution approved by the board directs that dissenting shareholders may obtain payment for their shares.
2. A shareholder may not assert dissenters' rights as to less than all of the shares registered in the name of the shareholder, unless the shareholder dissents with respect to all the shares that are beneficially owned by another person but registered in the name of the shareholder and discloses the name and address of each beneficial owner on whose behalf the shareholder dissents. In that event, the rights of the dissenter must be determined as if the shares as to which the shareholder has dissented and the other shares were registered in the names of different shareholders. The beneficial owner of shares who is not the shareholder may assert dissenters' rights with respect to shares held on behalf of the beneficial owner, and must be treated as a dissenting shareholder under the terms of this section and section 10-19.1-88, if the beneficial owner submits to the corporation at the time of or before the assertion of the rights a written consent of the shareholder.

3. Unless the articles, the bylaws, or a resolution approved by the board otherwise provide, the right to obtain payment under this section does not apply to the shareholders of the surviving corporation in a merger if the shares of the shareholder are not entitled to be voted on the merger.
4. The shareholders of a corporation who have a right under this section to obtain payment for their shares do not have a right at law or in equity to have a corporate action described in subsection 1 set aside or rescinded, except when the corporate action is fraudulent with regard to the complaining shareholder or the corporation.

SECTION 52. AMENDMENT. Section 10-19.1-89 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-89. Loans - Guarantees - Suretyship.

1. A corporation may lend money to, guarantee or pledge its assets as security for an obligation of, become a surety for, or otherwise financially assist any person, if the transaction, or a class of transactions to which the transaction belongs, is approved by the ~~affirmative vote of a majority of the directors present~~ board and:
 - a. Is in the usual and regular course of business of the corporation;
 - b. Is with, or for the benefit of, a related organization, an organization in which the corporation has a financial interest, ~~all organizations a person or organization~~ with which the corporation has a business relationship in the usual and regular course of business, or an organization to which the corporation has the power to make donations; ~~any of which relationships constitute consideration sufficient to make the loan, guarantee, suretyship, or other financial assistance so approved enforceable against the corporation;~~
 - c. Is with, or for the benefit of, an officer or director or other employee of the corporation or a ~~subsidiary, including an officer or employee who is a director of the corporation or a subsidiary~~ related organization, and may reasonably be expected, in the judgment of the board, to benefit the corporation; or
 - d. Whether or not any separate consideration has been paid or promised to the corporation has been approved by:
 - (1) The holders of two-thirds of the voting power of the shares entitled to vote which are owned by persons other than the interested person or persons; or
 - (2) The unanimous affirmative vote of the holders of all outstanding shares, whether or not entitled to vote.
2. A loan, guaranty, surety contract, or other financial assistance under subsection 1 may be with or without interest and may be unsecured or may be secured in any manner, including a grant of a security interest in shares of the corporation.
3. This section does not grant any authority to act as a bank or to carry on the business of banking.

SECTION 53. AMENDMENT. Section 10-19.1-90 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-90. Advances. A corporation may, without a vote of the directors or its shareholders, advance money to its shareholders who provide services, directors, officers, or employees to cover expenses that can reasonably be anticipated to be incurred by them in the performance of their duties and for which they would be entitled to reimbursement in the absence of an advance.

SECTION 54. AMENDMENT. Section 10-19.1-91 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-91. Indemnification.

1. For purposes of this section; ~~the terms defined in this subsection have the meanings given them;~~
 - a. "Corporation" includes a domestic or foreign corporation that was the predecessor of the corporation referred to in this section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.
 - b. "Official capacity" means:
 - (1) With respect to a director, the position of director in a corporation;
 - (2) With respect to a person other than a director, the elective or appointive office or position held by an officer, member of a committee of the board, or the employment relationship undertaken by an employee of the corporation; and
 - (3) With respect to a director, officer, or employee of the corporation who, while a director, officer, or employee of the corporation, is or was serving at the request of the corporation or whose duties in that position involve or involved service as a director, ~~governor~~, officer, manager, partner, trustee, ~~or~~ employee, or agent of another organization or employee benefit plan, the position of that person as a director, ~~governor~~, officer, manager, partner, trustee, ~~or~~ employee, or agent, as the case may be, of the other organization or employee benefit plan.
 - c. "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the corporation.
 - d. "Special legal counsel" means counsel who has not represented the corporation or a related organization, or a director, officer, member of a committee of the board, or employee whose indemnification is in issue.
2. Subject to subsection 5, a corporation shall indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines including excise taxes assessed against the person with respect to an

employee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the person:

- a. Has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines including excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by the person in connection with the proceeding with respect to the same acts or omission;
 - b. Acted in good faith;
 - c. Received no improper personal benefit and section 10-19.1-51, if applicable, has been satisfied;
 - d. In the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and
 - e. In the case of acts or omissions occurring in the official capacity described in paragraph 1 or 2 of subdivision b of subsection 1, reasonably believed that the conduct was in the best interests of the corporation, or in the case of acts or omissions occurring in the official capacity described in paragraph 3 of subdivision b of subsection 1, reasonably believed that the conduct was not opposed to the best interests of the corporation. If the person's acts or omissions complained of in the proceeding relate to conduct as a director, officer, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the corporation if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.
3. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent does not, of itself, establish that the person did not meet the criteria set forth in subsection 2.
 4. Subject to subsection 5, if a person is made or threatened to be made a party to a proceeding, the person is entitled, upon written request to the corporation, to payment or reimbursement by the corporation of reasonable expenses, including attorneys' fees and disbursements, incurred by the person in advance of the final disposition of the proceeding:
 - a. Upon receipt by the corporation of a written affirmation by the person of a good faith belief that the criteria for indemnification set forth in subsection 2 have been satisfied and a written undertaking by the person to repay all amounts so paid or reimbursed by the corporation, if it is ultimately determined that the criteria for indemnification have not been satisfied; and

- b. After a determination that the facts then known to those making the determination would not preclude indemnification under this section.

The written undertaking required by subdivision a is an unlimited general obligation of the person making it, but need not be secured and shall be accepted without reference to financial ability to make the repayment.

5. The articles or bylaws either may prohibit indemnification or advances of expenses otherwise required by this section or may impose conditions on indemnification or advances of expenses in addition to the conditions contained in subsections 2, 3, and 4 including monetary limits on indemnification or advances for expenses, if the conditions apply equally to all persons or to all persons within a given class. A prohibition or limit on indemnification or advances may not apply to or affect the right of a person to indemnification or advances of expenses with respect to any acts or omissions of the person occurring prior to the effective date of a provision in the articles or the date of adoption of a provision in the bylaws establishing the prohibition or limit on indemnification or advances.
6. This section does not require, or limit the ability of, a corporation to reimburse expenses, including attorneys' fees and disbursements, incurred by a person in connection with an appearance as a witness in a proceeding at a time when the person has not been made or threatened to be made a party to a proceeding.
7. All determinations whether indemnification of a person is required because the criteria provided in subsection 2 have been satisfied and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 4 must be made:
 - a. By the board by a majority of a quorum, if the directors who are at the time parties to the proceeding are not counted for determining either a majority or the presence of a quorum;
 - b. If a quorum under subdivision a cannot be obtained, by a majority of a committee of the board, consisting solely of two or more directors not at the time parties to the proceeding, duly designated to act in the matter by a majority of the full board including directors who are parties;
 - c. If a determination is not made under subdivision a or b, by special legal counsel, selected either by a majority of the board or a committee by vote pursuant to subdivision a or b or, if the requisite quorum of the full board cannot be obtained and the committee cannot be established, by a majority of the full board including directors who are parties;
 - d. If a determination is not made under subdivisions a, b, and c, by the shareholders, ~~but the shares held by parties to the proceeding may not be counted in determining the presence of a quorum and are not considered to be present and entitled to vote on the~~

determination other than the shareholders who are a party to the proceeding; or

- e. If an adverse determination is made under subdivisions a through d, or under subsection 8, or if no determination is made under subdivisions a through d, or under subsection 8, within sixty days after:
- (1) The later to occur of the termination of a proceeding or a written request for indemnification to the corporation; or
 - (2) A request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place, upon application of the person and any notice the court requires.

The person seeking indemnification or payment or reimbursement of expenses pursuant to this subdivision has the burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.

8. With respect to a person who is not, and who was not at the time of the acts or omissions complained of in the proceedings, a director, officer, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the corporation, the determination whether indemnification of this person is required because the criteria set forth in subsection 2 have been satisfied and whether this person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 4 may be made by an annually appointed committee of the board, having at least one member who is a director. The committee shall report at least annually to the board concerning its actions.
9. A corporation may purchase and maintain insurance on behalf of a person in that person's official capacity against any liability asserted against and incurred by the person in or arising from that capacity, whether or not the corporation would have been required to indemnify the person against the liability under the provisions of this section.
10. A corporation that indemnifies or advances expenses to a person in accordance with this section in connection with a proceeding by or on behalf of the corporation shall report to the shareholders in writing the amount of the indemnification or advance and to whom and on whose behalf it was paid not later than the next meeting of shareholders.
11. Nothing in this section may be construed to limit the power of the corporation to indemnify other persons by contract or otherwise.

SECTION 55. AMENDMENT. Section 10-19.1-92 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-92. Distributions.

1. The board may authorize and cause the corporation to make a distribution only if the board determines, in accordance with

- subsection 2, that the corporation will be able to pay its debts in the ordinary course of business after making the distribution and the board does not know before the distribution is made that the determination was or has become erroneous.
- a. The corporation may make the distribution if it is able to pay its debts in the ordinary course of business after making the distribution.
 - b. The effect of a distribution on the ability of the corporation to pay its debts in the ordinary course of business after making the distribution must be measured in accordance with subsection 3.
 - c. The right of the board to authorize, and the corporation to make, distributions may be prohibited, limited, or restricted by, or the rights and priorities of persons to receive distributions may be established by, the articles or bylaws or an agreement.
2. A determination that the corporation will be able to pay its debts in the ordinary course of business after the distribution is presumed to be proper if the determination is made in compliance with the standard of conduct provided in section 10-19.1-50 on the basis of financial information prepared in accordance with accounting methods, or a fair valuation or other method, reasonable in the circumstances. No liability under section 10-19.1-50 or 10-19.1-95 will accrue if the requirements of this subsection have been met.
3. With respect to the effect of a distribution:
- a. In the case of a distribution made by a corporation in connection with a purchase, redemption, or other acquisition of its shares, the effect of the distribution must be measured as of the date on which money or other property is transferred, or indebtedness payable in installments or otherwise is incurred, by the corporation, or as of the date on which the shareholder ceases to be a shareholder of the corporation with respect to the shares, whichever is the earliest.
 - b. The effect of any other distribution must be measured as of the date of its authorization if payment occurs one hundred twenty days or less following the date of authorization, or as of the date of payment if payment occurs more than one hundred twenty days following the date of authorization.
 - c. The provisions of chapter 13-02.1 do not apply to distributions made by a corporation governed by this chapter.
4. Indebtedness of a corporation incurred or issued in a distribution in accordance with this section to a shareholder who as a result of the transaction is no longer a shareholder is on a parity with the indebtedness of the corporation to its general unsecured creditors, except to the extent subordinated, agreed to, or secured by a pledge of any assets of the corporation or a related organization, or subject to any other agreement between the corporation and the shareholder.
5. A distribution may be made to the holders of a class or series of shares only if:

- a. All amounts payable to the holders of shares having a preference for the payment of that kind of distribution are paid; and
 - b. The payment of the distribution does not reduce the remaining net assets of the corporation below the aggregate preferential amount payable in the event of liquidation to the holders of shares having preferential rights, unless ~~the~~:
 - (1) The distribution is made to those shareholders in the order and to the extent of their respective priorities; or
 - (2) The holders of shares who do not receive distributions in that order give notice to the corporation of their agreement to waive their right to that distribution.
6. A determination that the payment of the distribution described in subsection 5 does not reduce the remaining net assets of the corporation below the aggregate preferential amount payable in the event of liquidation to the holders of shares having preferential rights is presumed to be proper if the determination is made in compliance with the standard of conduct provided in section 10-19.1-50 on the basis of financial information prepared in accordance with accounting methods, a fair valuation, or other methods reasonable in the circumstances. Liability under section 10-19.1-50 or 10-19.1-94 will not arise if the requirements of this subsection are met.
6. 7. If the money or property available for distribution is insufficient to satisfy all preferences, the distributions shall be made pro rata according to the order of priority of preferences by classes and by series within those classes.

SECTION 56. AMENDMENT. Section 10-19.1-95 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-95. Liability of directors for illegal distributions.

1. In addition to any other liabilities, a director who is present and votes for or fails to vote against, except a director who is prohibited by section 10-19.1-51 from voting on the distribution, or ~~who~~ consents in writing to, a distribution made in violation of subsection 1 or 5 of section 10-19.1-92 or a restriction contained in the articles or bylaws or an agreement, and who fails to comply with the standard of conduct provided in section 10-19.1-50, is liable to the corporation, its receiver or any other person winding up its affairs, jointly and severally with all other directors so liable and to other directors under subsection 3, but only to the extent that the distribution exceeded the amount that properly could have been paid under section 10-19.1-92.
2. A director against whom an action is brought under this section with respect to a distribution may implead in that action all shareholders who received the distribution and may compel pro rata contribution from them in that action to the extent provided in subsection 1 of section 10-19.1-94.
3. A director against whom an action is brought under this section with respect to a distribution may implead in that action all other directors

who voted for or consented in writing to the distribution and who failed to comply with the standard of conduct provided in section 10-19.1-50, and may compel pro rata contribution from them in that action.

4. An action may not be commenced under this section more than two years from the date of the distribution.

SECTION 57. AMENDMENT. Section 10-19.1-110 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-110. Dissolution procedure for corporations that give notice to creditors and claimants.

- ~~4.~~ When a notice of intent to dissolve has been filed with the secretary of state; the corporation may give notice of the filing to each creditor of and claimant against the corporation known or unknown, present or future, and contingent or noncontingent.
1. If notice to creditors and claimants is given, it must be given by ~~publishing~~:
 - a. Publishing the notice once each week for four successive weeks in an official newspaper, as defined in chapter 46-06, in the county or counties where the registered office and the principal executive office of the corporation are located; and ~~by giving~~
 - b. Giving written notice to known creditors and claimants pursuant to subsection 21 of section 10-19.1-01.
2. The notice to creditors and claimants must contain:
 - a. A statement that the corporation is in the process of dissolving;
 - b. A statement that the corporation has filed with the secretary of state a notice of intent to dissolve;
 - c. The date of filing the notice of intent to dissolve;
 - d. The address of the office to which written claims against the corporation must be presented; and
 - e. The date by which all the claims must be received, which must be the later of ninety days after published notice or, with respect to a particular known creditor or claimant, ninety days after the date on which written notice was given to that creditor or claimant. Published notice is deemed given on the date of first publication for the purpose of determining this date.
3. With respect to claims against ~~corporations~~ a corporation that ~~give~~ gave notice to creditors and claimants:
 - a. ~~A~~ The corporation that ~~gives notice to creditors and claimants~~ has thirty days from the receipt of each claim filed according to the procedures set forth by the corporation on or before the date set forth in the notice to accept or reject the claim by giving written

notice to the person submitting it. A claim not expressly rejected in this manner is deemed accepted.

- b. A creditor or claimant to whom notice is given and whose claim is rejected by the corporation has:
 - (1) Sixty days from the date of rejection;
 - (2) One hundred eighty days from the date the corporation filed with the secretary of state the notice of intent to dissolve; or
 - (3) Ninety days after the date on which notice was given to the creditor or claimant,

whichever is longer, to pursue any other remedies with respect to the claim.

- c. A creditor or claimant to whom notice is given who fails to file a claim according to the procedures set forth by the corporation on or before the date set forth in the notice is barred from suing on that claim or otherwise realizing upon it or enforcing it, except as provided in section 10-19.1-124.
 - d. A creditor or claimant whose claim is rejected by the corporation under subdivision b is barred from suing on that claim or otherwise realizing upon or enforcing it, if the creditor or claimant does not initiate legal, administrative, or arbitration proceedings with respect to the claim within the time provided in subdivision b.
4. Articles of dissolution for a corporation dissolving under this section that has given notice to creditors and claimants under this section must be filed with the secretary of state after:
 - a. The ninety-day period in subdivision e of subsection 2 has expired and the payment of claims of all creditors and claimants filing a claim within that period has been made or provided for; or
 - b. The longest of the periods described in subdivision b of subsection 3 has expired and there are no pending legal, administrative, or arbitration proceedings by or against the corporation commenced within the time provided in subdivision b of subsection 3.
 5. The articles of dissolution for a corporation that has given notice to creditors and claimants under this section must state:
 - a. The last date on which the notice was given and:
 - (1) That the payment of all creditors and claimants filing a claim within the ninety-day period in subdivision e of subsection 2 has been made or provided for; or
 - (2) The date on which the longest of the periods described in subdivision b of subsection 3 expired;
 - b. That the remaining property, assets, and claims of the corporation have been distributed among its shareholders in accordance with

subsection 5 of section 10-19.1-92, or that adequate provision has been made for that distribution; and

- c. That there are no pending legal, administrative, or arbitration proceedings by or against the corporation commenced within the time provided in subdivision b of subsection 3, or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

SECTION 58. AMENDMENT. Section 10-19.1-110.1 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-110.1. Dissolution procedure for corporations that do not give notice to creditors and claimants. When a notice of intent to dissolve has been filed with the secretary of state and the corporation has elected not to give notice to creditors and claimants in the manner provided in section 10-19.1-100:

1. Articles of dissolution for a corporation that has not given notice to creditors and claimants in the manner provided in section 10-19.1-110 ~~must:~~
 - a. Must be filed with the secretary of state after:
 - a. (1) The payment of claims of all known creditors and claimants has been made or provided for; or
 - b. (2) At least two years have elapsed from the date of filing the notice of intent to dissolve; and
2. ~~The articles of dissolution must~~
 - b. Must state:
 - a. (1) If the articles of dissolution are being filed pursuant to paragraph 1 of subdivision a of subsection 1, that all known debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made for payment or discharge;
 - b. (2) That the remaining property, assets, and claims of the corporation have been distributed among its shareholders in accordance with subsection 5 of section 10-19.1-92, or that adequate provision has been made for that distribution; and
 - e. (3) That there are no pending legal, administrative, or arbitration proceedings by or against the corporation, or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.
3. 2. With respect to claims against ~~corporations~~ a corporation that ~~do~~ does not give notice:
 - a. If a corporation has paid or provided for all known creditors or claimants at the time articles of dissolution are filed, a creditor or

claimant who does not file a claim or pursue a remedy, in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of intent to dissolve is barred from suing on that claim or otherwise realizing upon or enforcing it.

- b. If the corporation has not paid or provided for all known creditors and claimants at the time articles of dissolution are filed, a person who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of intent to dissolve is barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in section 10-19.1-124.

SECTION 59. AMENDMENT. Section 10-19.1-115 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-115. Involuntary dissolution.

1. A court may grant any equitable relief it deems just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and business:
 - a. In a supervised voluntary dissolution pursuant to section 10-19.1-114;
 - b. In an action by a shareholder when it is established that:
 - (1) The directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the corporate affairs ~~and~~, the shareholders are unable to break the deadlock, and the corporation or the parties have not provided for a procedure to resolve the dispute;
 - (2) The directors or those in control of the corporation have acted fraudulently or illegally toward one or more shareholders in their capacities as shareholders or directors of any corporation or as officers or employees of a closely held corporation;
 - (3) The directors or those in control of the corporation have acted in a manner unfairly prejudicial toward one or more shareholders in their capacities as shareholders or directors of a corporation that is not a publicly held corporation or as officers or employees of a closely held corporation;
 - (4) The shareholders of the corporation are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors;
 - (5) The corporate assets are being misapplied or wasted; or
 - (6) The period of duration as provided in the articles has expired and has not been extended as provided in section 10-19.1-124;

- c. In an action by a creditor when:
 - (1) The claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied; or
 - (2) The corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is unable to pay its debts in the ordinary course of business; or
 - d. In an action by the attorney general to dissolve the corporation in accordance with section 10-19.1-118 when it is established that a decree of dissolution is appropriate.
2. In determining whether to order equitable relief or dissolution, the court shall take into consideration the financial condition of the corporation but may not refuse to order equitable relief or dissolution solely on the ground that the corporation has accumulated or current operating profits.
 3. In an action under subdivision b of subsection 1 involving a corporation that is not a publicly held corporation at the time the action is commenced and in which one or more of the circumstances described in that subdivision is established, the court, upon motion of a corporation or a shareholder or beneficial owner of shares of the corporation, may order the sale by a plaintiff or a defendant of all shares of the corporation held by the plaintiff or defendant to either the corporation or the moving shareholders, whichever is specified in the motion, if the court determines in its discretion that an order would be fair and equitable to all parties under the circumstances of the case.
 - a. The purchase price of any shares so sold must be the fair value of the shares as of the date of the commencement of the action or as of another date found equitable by the court. However, if the shares in question are then subject to sale and purchase pursuant to the bylaws of the corporation, a shareholder control agreement, the terms of the shares, or otherwise, the court shall order the sale for the price and on the terms as set forth, unless the court determines that the price or terms are unreasonable under all the circumstances of the case.
 - b. Within five days after the entry of the order, the corporation shall provide each selling shareholder or beneficial owner with the information it is required to provide under subsection 6 of section 10-19.1-88.
 - c. If the parties are unable to agree on fair value within forty days of entry of the order, the court shall determine the fair value of the shares under the provisions of subsection 10 of section 10-19.1-88 and may allow interest or costs as provided in subsections 1 and 11 of section 10-19.1-88.
 - d. The purchase price must be paid in one or more installments as agreed on by the parties, or, if no agreement can be reached within forty days of entry of the order, as ordered by the court. Upon entry of an order for the sale of shares under this subsection and

provided that the corporation or the moving shareholders post a bond in adequate amount with sufficient sureties or otherwise satisfy the court that the full purchase price of the shares, plus any additional costs, expenses, and fees as may be awarded, will be paid when due and payable, the selling shareholders shall no longer have any rights or status as shareholders, officers, or directors, except the right to receive the fair value of their shares plus such other amounts as may be awarded.

4. In determining whether to order equitable relief or dissolution, the court shall take into consideration the duty which all shareholders in a closely held corporation owe one another to act in an honest, fair, and reasonable manner in the operation of the corporation and the reasonable expectations of the shareholders as they exist at the inception and develop during the course of the shareholders' relationship with the corporation and with each other. For purposes of this section, any written agreement, including an employment agreement and a buy-sell agreement, between or among shareholders or between or among one or more shareholders and the corporation is presumed to reflect the parties' reasonable expectation concerning the matters dealt with in the agreement.
5. In deciding whether to order dissolution, the court shall consider whether lesser relief suggested by one or more parties, such as any form of equitable relief, a buyout, or a partial liquidation, would be adequate to permanently relieve the circumstances established under subdivision b or c of subsection 1. Lesser relief may be ordered in any case where it would be appropriate under all the facts and circumstances of the case.
6. If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including attorneys' fees and disbursements, to any of the other parties.
7. Proceedings under this section must be brought in a court within the county in which the ~~registered~~ principal executive office of the corporation is located. It is not necessary to make shareholders parties to the action or proceeding unless relief is sought against them personally.

SECTION 60. AMENDMENT. Section 10-19.1-117 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-117. Qualifications of receivers - Powers.

1. A receiver must be a ~~natural person or a domestic corporation or a foreign corporation~~ an individual, a domestic organization, or a foreign organization authorized to transact business or conduct activities in this state. A receiver shall give bond as directed by the court with the sureties required by the court.
2. A receiver may sue and defend in all courts as receiver of the corporation. The court appointing the receiver has exclusive jurisdiction of the corporation and its property.

SECTION 61. AMENDMENT. Section 10-19.1-123 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-123. Deposit with ~~state treasurer~~ administrator of abandoned property of amount due certain shareholders - Appropriation. Upon dissolution of a corporation, the portion of the assets distributable to a ~~shareholder person~~ person who is unknown or cannot be found, ~~or who is under disability, if there is no person legally competent to receive the distributive portion,~~ must be reduced to money and deposited with the ~~state treasurer~~ administrator of abandoned property for disposition pursuant to chapter 47-30.1. The amount deposited is appropriated to the ~~state treasurer~~ administrator of abandoned property and must be paid over to the ~~shareholder person~~ person or a legal representative, upon proof satisfactory to the ~~state treasurer~~ administrator of abandoned property of a right to payment.

SECTION 62. AMENDMENT. Section 10-19.1-124 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-124. Claims barred - Exceptions.

1. ~~Except as provided in this section, a creditor or claimant whose claims are barred under section 10-19.1-110, 10-19.1-110.1, or 10-19.1-119 includes a person who is or becomes a creditor or claimant at any time before, during, or following the conclusion of dissolution proceedings, and all those claiming through or under the creditor or claimant. A person who is or becomes a creditor or claimant at any time before, during, or following the conclusion of dissolution proceedings, who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within the time provided in section 10-19.1-110, 10-19.1-110.1, 10-19.1-114, 10-19.1-115, or 10-19.1-119, or has not begun a legal, administrative, or arbitration proceeding before the beginning of the dissolution proceedings, and a person claiming through or under the creditor or claimant, is barred from bringing that claim or otherwise realizing upon or enforcing it, except as provided in this section.~~
2. At any time within one year after articles of dissolution have been filed with the secretary of state, or a decree of dissolution has been entered, a creditor or claimant who shows good cause for not having previously filed the claim may apply to a court in this state to allow a claim:
 - a. Against the corporation to the extent of undistributed assets; or
 - b. If the undistributed assets are not sufficient to satisfy the claim, against a shareholder, whose liability is limited to a portion of the claim that is equal to the portion of the distributions to shareholders in liquidation or dissolution received by the shareholder, but in no event may a shareholder's liability exceed the amount which that shareholder actually received in the dissolution.
3. All known contractual debts, obligations, and liabilities incurred in the course of winding up the corporation's affairs shall be paid by the corporation before the distribution of assets to a shareholder. A person to whom this kind of debt, obligation, or liability is owed but not paid may pursue any remedy against the officers and directors of the corporation who are responsible for, but who fail to cause the corporation to pay or make provision for, payment of the debts,

obligations, and liabilities, or against shareholders to the extent permitted under section 10-19.1-94. This subsection does not apply to dissolution under the supervision or order of a court.

SECTION 63. AMENDMENT. Section 10-19.1-127 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-127. Extension after duration expired.

1. A corporation whose period of duration as provided in the articles has expired and which has continued to do business despite that expiration may reinstate its articles and extend the period of ~~corporate~~ duration, including making the duration perpetual, within one year after the date of expiration by filing an amendment to the articles as set forth in this section.
2. An amendment to the articles ~~is~~ must be approved by the ~~affirmative vote of a majority of the directors present~~ board must include:
 - a. The date on which the period of duration expired under the articles;
 - b. A statement that the period of duration will be perpetual or, if some shorter period is to be provided, the date to which the period of duration is extended; and
 - c. A statement that the corporation has been in continuous operation since before the date of expiration of its original period of duration.
3. The amendment to the articles must be presented, after notice, ~~to~~ at a meeting of the shareholders. The amendment is adopted when approved by the shareholders pursuant to section 10-19.1-19.
4. Articles of amendment, together with any fees and delinquent filings and reports, conforming to section 10-19.1-21 must be filed with the secretary of state.

SECTION 64. Section 10-19.1-132 of the North Dakota Century Code is created and enacted as follows:

10-19.1-132. Foreign corporation - Governing law.

1. Subject to the constitution of this state, the laws of the jurisdiction under which a foreign corporation is incorporated govern its incorporation and internal activities.
 - a. Nothing in this chapter authorizes this state to regulate the incorporation or internal activities of a foreign corporation.
 - b. A foreign corporation may not be denied a certificate of authority to conduct activities in this state by reason of any difference between the laws of the jurisdiction under which the foreign corporation was incorporated and the laws of this state.
2. A foreign corporation holding a valid certificate of authority in this state has no greater rights and privileges than a domestic corporation. The certificate of authority does not authorize the foreign corporation to

exercise any of its powers or purposes that a domestic corporation is forbidden by law to exercise in this state.

3. A foreign corporation may not be denied a certificate of authority to conduct activities in this state by reason of any difference between the laws of the jurisdiction under which the foreign corporation is incorporated and the laws of this state.

SECTION 65. Section 10-19.1-133 of the North Dakota Century Code is created and enacted as follows:

Foreign corporation - Name. A foreign corporation may apply for a certificate of authority under any name that would be available to a domestic corporation, whether or not the name is the name under which it is authorized in its jurisdiction of incorporation. A trade name must be registered as provided in chapter 47-25 when applying for a certificate of authority under a name different from the name authorized in the jurisdiction of incorporation.

SECTION 66. Section 10-19.1-134 of the North Dakota Century Code is created and enacted as follows:

10-19.1-134. Foreign corporation - Admission of foreign corporation - Transacting business - Obtaining licenses and permits. A foreign corporation may not:

1. Transact business in this state or obtain any license or permit required by this state until it has procured a certificate of authority from the secretary of state.
2. Transact any business in this state prohibited to a domestic corporation incorporated under this chapter.
3. Be denied a certificate of authority because the laws of the state or country where the corporation is incorporated differ from the laws of this state.

SECTION 67. Section 10-19.1-135 of the North Dakota Century Code is created and enacted as follows:

10-19.1-135. Foreign corporation application for certificate of authority.

1. An applicant for a certificate shall file with the secretary of state an application executed by an authorized person and setting forth:
 - a. The name of the foreign corporation and, if different, the name under which it proposes to transact business in this state;
 - b. The jurisdiction of its incorporation;
 - c. The date of incorporation in the jurisdiction of its incorporation and the period of duration of the foreign corporation;
 - d. The address of the principal executive office of the foreign corporation;

- e. The address of the proposed registered office of the foreign corporation in this state;
 - f. The name of the proposed registered agent in this state, as defined under section 10-19.1-15;
 - g. The purpose of the corporation which it proposes to pursue in transacting business in this state;
 - h. The names and addresses of the directors and officers of the foreign corporation; and
 - i. Any additional information deemed necessary or appropriate by the secretary of state to enable the secretary of state to determine whether the foreign corporation is entitled to a certificate of authority to transact business in this state.
2. The application must be accompanied by payment of the fees provided in section 10-19.1-147 together with a certificate of good standing or a certificate of existence duly authenticated by the incorporating officer of the state or country where the corporation is incorporated and the consent of the designated registered agent for service of process to serve in that capacity.

SECTION 68. Section 10-19.1-136 of the North Dakota Century Code is created and enacted as follows:

10-19.1-136. Foreign corporation - Issuance of certificate of authority. If the secretary of state finds an application for a certificate of authority conforms to law and all fees have been paid, the secretary shall:

1. Endorse on the application the word "filed" and the date of the filing;
2. File the application, the certificate of good standing or certificate of existence, and the consent of the registered agent; and
3. Issue to the corporation or its representative a certificate of authority to transact business in this state.

SECTION 69. Section 10-19.1-137 of the North Dakota Century Code is created and enacted as follows:

10-19.1-137. Foreign corporation - Amendments to the certificate of authority. If any statement in the application for a certificate of authority by a foreign corporation was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign corporation shall promptly file with the secretary of state an application for an amended certificate of authority executed by an authorized person correcting the statement and, in the case of a change in its name, a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign corporation is incorporated. In the case of a dissolution, a foreign corporation need not file an application for an amended certificate of authority but shall promptly file with the secretary of state a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign corporation is incorporated.

SECTION 70. Section 10-19.1-138 of the North Dakota Century Code is created and enacted as follows:

10-19.1-138. Foreign corporation - Registered agent - Registered office - Certain reports. A foreign corporation authorized to transact business in this state shall:

1. Establish and continuously maintain a registered office in the same manner as provided in section 10-19.1-15;
2. Appoint and continuously maintain a registered agent in the same manner as provided in section 10-19.1-15; and
3. File a report upon any change in the address of its registered office or in the name or address of its registered agent in the same manner as provided in section 10-19.1-16.

SECTION 71. Section 10-19.1-139 of the North Dakota Century Code is created and enacted as follows:

10-19.1-139. Foreign corporation - Merger of foreign corporation authorized to transact business in this state. Whenever a foreign corporation authorized to transact business in this state is a party to a statutory merger permitted by the laws of the jurisdiction under which it is incorporated, and the corporation is not the surviving organization, the surviving organization shall, within thirty days after the merger becomes effective, file with the secretary of state a certified statement of merger duly authenticated by the proper officer of the state or country where the statutory merger was effected. Any foreign organization which is the surviving organization in a merger and which will continue to transact business in this state, shall procure a new certificate of authority.

SECTION 72. Section 10-19.1-140 of the North Dakota Century Code is created and enacted as follows:

10-19.1-140. Foreign corporation - Certificate of withdrawal.

1. A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure the certificate, the foreign corporation shall file with the secretary of state an application for withdrawal, together with the fees provided in section 10-19.1-147, which must set forth:
 - a. The name of the corporation and the state or country under the laws of which it is incorporated;
 - b. That the corporation is not transacting business in this state;
 - c. That the corporation surrenders its authority to transact business in this state;
 - d. That the corporation revokes the authority of its registered agent in this state to accept service of process and consents to that service of process on the corporation by service upon the secretary of state in any action, suit, or proceeding based upon any cause of action

arising in this state during the time the corporation was authorized to transact business in this state;

- e. A post-office address to which a person may mail a copy of any process against the corporation; and
 - f. Any additional information necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees payable by the foreign corporation.
2. The filing with the secretary of state of a certificate of dissolution, or a certificate of merger if the corporation is not the surviving organization, from the proper officer of the state or country under the laws of which the corporation is incorporated constitutes a valid application of withdrawal and the authority of the corporation to transact business in this state shall cease upon filing of the certificate.

SECTION 73. Section 10-19.1-141 of the North Dakota Century Code is created and enacted as follows:

10-10.1-141. Foreign corporation - Revocation of certificate of authority.

1. The certificate of authority of a foreign corporation to transact business in this state may be revoked by the secretary of state upon the occurrence of either of these events:
 - a. The foreign corporation has failed to:
 - (1) Maintain a registered office as required by this chapter;
 - (2) Appoint and maintain a registered agent as required by this chapter;
 - (3) File a report upon any change in the address of its registered office;
 - (4) File a report upon any change in the name or business address of the registered agent; or
 - (5) File in the office of the secretary of state any amendment to its application for a certificate of authority as specified in section 10-19.1-137; or
 - b. A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by the foreign corporation pursuant to this chapter.
2. Except for the annual report for which the certificate of authority may be revoked as provided in section 10-19.1-146, no certificate of authority of a foreign corporation may be revoked by the secretary of state unless:
 - a. The secretary has given the foreign corporation at least sixty days' notice by mail addressed to its registered office in this state or, if the foreign corporation fails to appoint and maintain a registered agent in this state, addressed to its principal executive office; and

- b. During the sixty-day period, the foreign corporation has failed to file the report of change regarding the registered office or the registered agent, to file any amendment, or to correct the misrepresentation.
3. Upon the expiration of sixty days after the mailing of the notice, the authority of the foreign corporation to transact business in this state ceases; and the secretary of state shall issue a certificate of revocation and shall mail the certificate to the principal executive office of the foreign corporation.

SECTION 74. Section 10-19.1-142 of the North Dakota Century Code is created and enacted as follows:

10-19.1-142. Foreign corporation - Transaction of business without certificate of authority.

1. A foreign corporation transacting business in this state may not maintain any claim, action, suit, or proceeding in any court of this state until it possesses a certificate of authority.
2. The failure of a foreign corporation to obtain a certificate of authority does not impair the validity of any contract or act of the foreign corporation or prevent the foreign corporation from defending any claim, action, suit, or proceeding in any court of this state.
3. A foreign corporation, by transacting business in this state without a certificate of authority, appoints the secretary of state as its agent upon whom any notice, process, or demand may be served.
4. A foreign corporation that transacts business in this state without a valid certificate of authority is liable to the state for the years or parts of years during which it transacted business in this state without the certificate in an amount equal to all fees that would have been imposed by this chapter upon that corporation had it duly obtained the certificate, filed all reports required by this chapter, and paid all penalties imposed by this chapter. The attorney general shall bring proceedings to recover all amounts due this state under the provisions of this section.
5. A foreign corporation that transacts business in this state without a valid certificate of authority is subject to a civil penalty, payable to the state, and not to exceed five thousand dollars. Each director and each officer or agent who authorizes, directs, or participates in the transaction of business in this state on behalf of a foreign corporation that does not have a certificate is subject to a civil penalty, payable to the state, and not to exceed one thousand dollars.
6. The civil penalties set forth in subsection 5 may be recovered in an action brought within the district court of Burleigh County by the attorney general. Upon a finding by the court that a foreign corporation or any of its members, directors, officers, or agents have transacted business in this state in violation of this chapter, the court shall issue, in addition to the imposition of a civil penalty, an injunction restraining the further transaction of the business of the foreign corporation and the further exercise of any rights and privileges by the corporation in this state. The foreign corporation must be enjoined from transacting

business in this state until all civil penalties plus any interest and court costs that the court may assess have been paid and until the foreign corporation has otherwise complied with the provisions of this chapter.

7. A member of a foreign corporation is not liable for the debts and obligations of the corporation solely by reason of the corporation having transacted business in this state without a valid certificate of authority.

SECTION 75. Section 10-19.1-143 of the North Dakota Century Code is created and enacted as follows:

10-19.1-143. Foreign corporation - Transactions not constituting transacting business.

1. The following activities of a foreign corporation, among others, do not constitute transacting business within the meaning of this chapter:
 - a. Maintaining, defending, or settling any proceeding;
 - b. Holding meetings of its shareholders or carrying on any other activities concerning its internal activities;
 - c. Maintaining bank accounts;
 - d. Maintaining offices or agencies for the transfer, exchange, and registration of the foreign corporation's own securities or maintaining trustees or depositories with respect to those securities;
 - e. Selling through independent contractors;
 - f. Soliciting or obtaining orders, whether by mail or through employees, agents, or otherwise, if the orders require acceptance outside this state before they become contracts;
 - g. Creating or acquiring indebtedness, mortgages, and security interest in real or personal property;
 - h. Securing or collecting debts or enforcing mortgages and security interests in property securing the debts; or
 - i. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like manner.
2. The term "transacting business" as used in this section has no effect on personal jurisdiction under the North Dakota Rules of Civil Procedure.
3. For purposes of this section, any foreign corporation that owns income-producing real or tangible personal property in this state, other than property exempted under subsection 1, will be considered transacting business in this state.
4. The list of activities in subsection 1 is not exhaustive. This section does not apply in determining the contracts or activities that may subject a foreign corporation to service of process or taxation in this state or to regulation under any other law of this state.

SECTION 76. Section 10-19.1-144 of the North Dakota Century Code is created and enacted as follows:

10-19.1-144. Foreign corporation - Action by attorney general. The attorney general may bring an action to restrain a foreign corporation from transacting business in this state in violation of this chapter.

SECTION 77. Section 10-19.1-145 of the North Dakota Century Code is created and enacted as follows:

10-19.1-145. Foreign corporation - Service of process. Service of process on a foreign corporation must be as provided in section 10-19.1-129. When a foreign corporation transacts business without a certificate of authority or when the certificate of authority of a foreign corporation is suspended or revoked, the secretary of state is an agent of the foreign corporation for service of process, notices, or demand.

SECTION 78. Section 10-19.1-146 of the North Dakota Century Code is created and enacted as follows:

10-19.1-146. Secretary of state - Annual report of corporations and foreign corporations - Involuntary dissolution - Revocation of certificate of authority.

1. Each corporation and each foreign corporation authorized to transact business in this state, shall file, within the time prescribed by subsection 3, an annual report setting forth:
 - a. The name of the corporation or foreign corporation and the state or country under the laws of which it is incorporated.
 - b. The address of the registered office of the corporation or foreign corporation in this state, the name of its registered agent in this state at that address, and the address of its principal executive office.
 - c. A brief statement of the character of the business in which the corporation or foreign corporation is actually engaged in this state.
 - d. The names and respective addresses of the officers and directors of the corporation or foreign corporation.
 - e. A statement of the aggregate number of shares the corporation or foreign corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
 - f. A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
 - g. A statement, expressed in dollars, of the amount of shareholders' equity in the corporation or foreign corporation. Shareholders' equity is the net difference between total assets and total liabilities and may include the sum of the following:
 - (1) Consideration received for issued shares;

- (2) Additional paid-in capital;
 - (3) Capital surplus;
 - (4) Undivided profits;
 - (5) Retained earnings or retained deficit;
 - (6) Unrealized holding gains or losses;
 - (7) Consideration paid for treasury shares; and
 - (8) Any other amounts the corporation has transferred to shareholders' equity.
- h. Irrespective of the manner of its designation by the laws under which a foreign corporation is incorporated, the shareholders' equity of a foreign corporation must be determined on the same basis and in the same manner as the shareholders' equity of a domestic corporation, for the purpose of computing fees and other charges imposed by this chapter.
- i. A statement, expressed in dollars, of the value of all the property owned by the corporation, wherever located, and the value of the property of the corporation located within this state, and a statement, expressed in dollars, of the total gross income of the corporation for the twelve months ending on December thirty-first preceding the date herein provided for the filing of the annual report and the gross amount thereof accumulated by the corporation at or from places of business in this state. If, on December thirty-first preceding the time herein provided for the filing of the report, the corporation had not been in existence for a period of twelve months, or, in the case of a foreign corporation, had not been authorized to transact business in this state for a period of twelve months, then the statement with respect to total gross income must be furnished for the period between the date of incorporation or the date of its authorization to transact business in this state and December thirty-first.
- j. Any additional information as may be necessary or appropriate in order to enable the secretary of state to determine and assess the proper amount of fees payable by the corporation.
2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report except as to the information required by subdivisions g, i, and j of subsection 1 which must be given as of the close of business on December thirty-first next preceding the date herein provided for the filing of the report, or, in the alternative, data of the fiscal year ending next preceding this report may be used. The annual report must be signed as prescribed in subsection 37 of section 10-19.1-01, or the articles or the bylaws or a resolution approved by the affirmative vote of the required proportion or number of the directors or holders of shares entitled to vote. If the corporation or foreign corporation is in the hands of a receiver or trustee, it must be signed on behalf of the corporation or foreign corporation by the receiver or

trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years. The secretary of state, or any employee or legal representative of the secretary of state, may not disclose the information reported under subdivisions g, i, and j of subsection 1 to any person, except a person who is verified to be a shareholder of the corporation or foreign corporation, a legal representative of the shareholder for which information is requested, or to the tax commissioner or any employee or legal representative of the tax commissioner, who may not disclose the information and may use the information only for the administration of the tax laws.

3. Except for the first annual report, the annual report must be delivered to the secretary of state:
 - a. By a corporation, before August second of each year, and
 - b. By a foreign corporation, before May sixteenth of each year.

The first annual report of either a corporation or foreign corporation must be delivered before the date provided in the year following the calendar year in which the certificate of incorporation or certificate of authority was issued by the secretary of state, or in the case of a corporation, in the year following the calendar year of the effective date stated in the articles of incorporation. An annual report in a sealed envelope postmarked by the United States postal service before the date provided in this subsection, or an annual report in a sealed packet with a verified shipment date by any other carrier service before the date provided in this subsection, is compliance with this requirement. When the filing date falls on Saturday, Sunday, or other holiday as defined in section 1-03-01, a postmark or verified shipment date on the next business day is compliance with this requirement.

4. The secretary of state must file the annual report if the annual report conforms to the requirements of this section and all fees have been paid as provided in section 10-19.1-147.
 - a. If the annual report does not conform, it must be returned to the corporation or foreign corporation for any necessary correction or payment.
 - b. If the annual report is corrected and filed before the date provided in subsection 3, or within thirty days after the annual report was returned by the secretary of the state for correction, then the penalties prescribed in section 10-19.1-147 for the failure to file an annual report within the time provided do not apply.
5. The secretary of state may extend the annual report filing date provided in subsection 3 if a written application for an extension is delivered before the date provided in subsection 3. A corporation or foreign corporation with a fiscal year ending within three months before the date provided in subsection 3 may make a written request for an extension, to apply to reports for subsequent years until the fiscal year is changed.
6. Within three months after the date provided in subsection 3, the secretary of state shall notify any corporation or foreign corporation

failing to file its annual report that its certificate of incorporation or certificate of authority is not in good standing and that it may be dissolved or revoked as provided in subsection 7 or 8.

- a. The secretary of state must mail the notice of impending dissolution or revocation to the last registered agent at the last registered office of record.
 - b. If the corporation or foreign corporation files its annual report after the notice is mailed, together with the filing fee and the late filing penalty fee provided in section 10-19.1-147, then the secretary of state shall restore its certificate of incorporation or certificate of authority to good standing.
7. A corporation that fails to file its annual report, together with the filing and penalty fees for late filing provided in section 10-19.1-147, within one year after the date provided in subsection 3 ceases to exist as a corporation and is considered involuntarily dissolved by operation of law.
 - a. The secretary of state shall note the dissolution of the corporation's certificate of incorporation on the records of the secretary of state and shall give notice of the action to the dissolved corporation.
 - b. Notice by the secretary of state must be mailed to the last registered agent at the last registered office of record.
8. A foreign corporation that fails to file its annual report, together with the filing and penalty fees for late filing provided in section 10-19.1-147, within one year after the date provided in subsection 3 forfeits its authority to transact business in this state.
 - a. The secretary of state shall note the revocation of the foreign corporation's certificate of authority on the records of the secretary of state and shall give notice of the action to the foreign corporation.
 - b. Notice by the secretary of state must be mailed to the foreign corporation's last registered agent at the last registered office of record.
 - c. The decision by the secretary of state that a certificate of authority must be revoked under this subsection is final.
9. A corporation dissolved for failure to file an annual report, or a foreign corporation whose authority was forfeited by failure to file an annual report, may be reinstated by filing a past-due report, together with the filing and penalty fees for an annual report and a reinstatement fee as provided in section 10-19.1-147. The fees must be paid and an annual report filed within one year following the involuntary dissolution or revocation. Reinstatement under this subsection does not affect the rights or liability for the time from the dissolution or revocation to the reinstatement.

SECTION 79. Section 10-19.1-147 of the North Dakota Century Code is created and enacted as follows:

10-19.1-147. Fees for filing documents - Issuing certificates - License fees.

The secretary of state shall charge and collect for:

1. Filing articles of incorporation and issuing a certificate of incorporation, thirty dollars.
2. Filing articles of amendment, twenty dollars.
3. Filing restated articles of incorporation, thirty dollars.
4. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifty dollars.
5. Filing articles of abandonment of merger, fifty dollars.
6. Filing an application to reserve a corporate name, ten dollars.
7. Filing a notice of transfer of a reserved corporate name, ten dollars.
8. Filing a cancellation of reserved corporate name, ten dollars.
9. Filing a consent to use of name, ten dollars.
10. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.
11. Filing a statement of change of address of registered office by registered agent, ten dollars for each corporation affected by such change.
12. Filing a registered agent's consent to serve in such capacity, ten dollars.
13. Filing a resignation as registered agent, ten dollars.
14. Filing a statement of the establishment of a series of shares, twenty dollars.
15. Filing a statement of cancellation of shares, twenty dollars.
16. Filing a statement reduction of stated capital, twenty dollars.
17. Filing a statement of intent to dissolve, ten dollars.
18. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.
19. Filing articles of dissolution, twenty dollars.
20. Filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, forty dollars.
21. Filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, forty dollars.

22. Filing a certificate of fact stating a merger or consolidation of a foreign corporation holding a certificate of authority to transact business in this state, fifty dollars.
23. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars.
24. Filing an annual report of a corporation or foreign corporation, twenty-five dollars. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:

 - a. Within ninety days after the date provided in subsection 3 of section 10-19.1-146, twenty dollars;
 - b. Thereafter, sixty dollars; and
 - c. After the involuntary dissolution of a corporation, or the revocation of the certificate of authority of a foreign corporation, the reinstatement fee of one hundred thirty-five dollars.
25. Filing any process, notice, or demand for service, twenty-five dollars.
26. Furnishing a certified copy of any document, instrument, or paper relating to a corporation, one dollar for every four pages or fraction thereof and fifteen dollars for the certificate and affixing the seal thereto.
27. License fee of fifty dollars for the first fifty thousand dollars of a corporation's authorized shares, or fraction thereof, and the further sum of ten dollars if paid at the time of authorization, or twelve dollars if paid after authorized shares are issued, for every additional ten thousand dollars of its authorized shares, or fraction thereof, in excess of fifty thousand dollars.

 - a. A license fee is payable by a corporation at the time of:

 - (1) Filing articles of incorporation;
 - (2) Filing articles of amendment increasing the number or value of authorized shares; or
 - (3) Filing articles of merger or consolidation increasing the number or value of authorized shares a surviving or new corporation will have authority to issue above the aggregate number or value of shares the constituent corporations had authority to issue.
 - b. A license fee payable on an increase in authorized shares must be imposed only on the additional shares, but the amount of previously authorized shares must be taken into account in determining the rate applicable to the additional authorized shares.
 - c. For the purposes of this subsection, shares without par value are considered worth one dollar per share.
 - d. The minimum sum of fifty dollars must be paid for authorized shares at the time of filing articles of incorporation.

- e. A corporation increasing authorized shares by articles of amendment or articles of merger must have previously paid for a minimum of fifty thousand dollars of authorized shares. Thereafter, a corporation may postpone the payment for any additional amount until the filing of an annual report after the unpaid shares are issued. Any additional amount must be paid in increments of ten thousand dollars of its authorized shares.
 - f. The provisions of this subsection do not apply to a building and loan or savings and loan association.
28. License fee of eighty-five dollars from each foreign corporation at the time of filing an application for a certificate of authority to transact business in this state. Thereafter, the secretary of state shall fix the license fee for each foreign corporation as follows:
- a. The secretary of state shall first ascertain the license fee which a newly organized corporation would be required to pay if it had authorized shares of the same kind and amount as the issued or allotted shares of the reporting foreign corporation shown by its filed annual report.
 - b. Said amount must be multiplied by a fraction, the numerator of which must be the sum of the value of the property of the foreign corporation located in this state and the gross receipts of the foreign corporation derived from its business transacted within this state, and the denominator of which must be the sum of the value of all of its property wherever located and the gross receipts of the foreign corporation derived from its business wherever transacted. The amounts used in determining the numerator and denominator must be determined from the foreign corporation's filed annual report.
 - c. From the product of such multiplication, there must be deducted the aggregate amount of license fee previously paid by the foreign corporation, and the remainder, if any, must be the amount of additional fee to be paid by the foreign corporation.

The secretary of state shall enter the amount of any additional license fee in the records of the foreign corporation in the secretary of state's office and shall mail a notice of the amount of additional license fee due to the foreign corporation at its principal office. The additional license fee must be paid by the foreign corporation before the annual report may be filed by the secretary of state. Amounts less than five dollars are not collected.

29. Filing any other statement of a corporation or foreign corporation, ten dollars.

SECTION 80. Section 10-19.1-148 of the North Dakota Century Code is created and enacted as follows:

10-19.1-148. Secretary of state - Powers - Enforcement - Penalty - Appeal.

1. The secretary of state has the power and authority reasonably necessary to efficiently administer this chapter and to perform the duties imposed thereby.

2. The secretary of state may propound to any corporation or foreign corporation that is subject to this chapter and to any officer, director, or employee thereof, any interrogatory reasonably necessary and proper to ascertain whether the corporation has complied with all provisions of this chapter applicable to the corporation.

 - a. The interrogatory must be answered within thirty days after mailing, or within any additional time as must be fixed by the secretary of state. The answer to the interrogatory must be full and complete and must be made in writing and under oath.
 - b. If the interrogatory is directed:

 - (1) To an individual, it must be answered by that individual; or
 - (2) To a corporation, it must be answered by the president, vice president, secretary, or assistant secretary of the corporation.
 - c. The secretary of state is not required to file any document to which the interrogatory relates until the interrogatory has been answered, and not then if the answers disclose the document is not in conformity with this chapter.
 - d. The secretary of state shall certify to the attorney general, for action the attorney general may deem appropriate, an interrogatory and answers thereto, which discloses a violation of this chapter.
 - e. Each officer, director, or employee of a corporation or foreign corporation who fails or refuses within the time provided by subdivision a of subsection 2 to answer truthfully and fully an interrogatory propounded to that person by the secretary of state is guilty of an infraction.
 - f. An interrogatory propounded by the secretary of state and the answers are not open to public inspection. The secretary of state may not disclose any facts or information obtained from the interrogatory or answers except insofar as permitted by law or insofar as required for evidence in any criminal proceedings or other action by this state.
3. If the secretary of state rejects any document required by this chapter to be approved by the secretary of state before the document may be filed, then the secretary of state shall give written notice of the rejection to the person who delivered the document, specifying the reasons for rejection.

 - a. From such rejection the person may appeal to the district court of the county in which the registered office of such corporation is, or is proposed to be, situated by filing with the clerk of the court a petition setting forth a copy of the document sought to be filed and a copy of the written rejection of the document by the secretary of state.
 - b. The matter must be tried de novo by the court. The court shall either sustain the action of the secretary of state or direct the secretary of state to take the action the court determines proper.

4. If the secretary of state revokes the certificate of authority to transact business in this state of any foreign corporation, pursuant to section 10-19.1-141, then the foreign corporation may appeal to the district court of the county where the registered office of the foreign corporation in this state is situated by filing with the clerk of the court a petition setting forth a copy of the corporation's certificate of authority to transact business in this state and a copy of the notice of revocation given by the secretary of state. The matter must be tried de novo by the court. The court shall sustain the action of the secretary of state or direct the secretary of state to take the action the court determines proper.
5. Appeals from all final orders and judgments entered by the district court under this section in review of any ruling or decision of the secretary of state are treated as other civil actions.

SECTION 81. Section 10-10.1-149 of the North Dakota Century Code is created and enacted as follows:

10-19.1-149. Secretary of state - Certificates and certified copies to be received in evidence.

1. All certificates issued by the secretary of state and all copies of documents filed in accordance with this chapter, when certified by the secretary of state, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts stated.
2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts stated.

SECTION 82. Section 10-19.1-150 of the North Dakota Century Code is created and enacted as follows:

10-19.1-150. Secretary of state - Forms to be furnished by the secretary of state. All reports required by this chapter to be filed in the office of the secretary of state must be made on forms prescribed by the secretary of state. Forms for all other documents to be filed in the office of the secretary of state may be furnished by the secretary of state upon request. However, the use of such documents, unless otherwise specifically required by law, is not mandatory.

SECTION 83. Section 10-19.1-151 of the North Dakota Century Code is created and enacted as follows:

10-19.1-151. Miscellaneous - Foreign trade zones.

1. As used in this section, unless the context otherwise requires:
 - a. "Act of Congress" means the Act of Congress approved June 18, 1934, entitled an act to provide for the establishment, operation, and maintenance of foreign trade zones and ports of entry of the United States, to expedite and encourage foreign commerce and for

other purposes, as amended, and commonly known as the Foreign Trade Zone Act of 1934 [48 Stat. 998; 19 U.S.C. 81a et seq.].

- b. "Private corporation" means a corporation authorized under this chapter, one of the purposes of which is to establish, operate, and maintain a foreign trade zone by itself or in conjunction with a public corporation.
 - c. "Public corporation" means this state; a political subdivision of this state, any municipality of this state, any public agency of this state, or any other corporate instrumentality of this state.
2. Any private corporation or public corporation has the power to apply to the proper authorities of the United States for a grant of the privilege of establishing, operating, and maintaining foreign trade zones and foreign trade subzones and to do all things necessary and proper to carry into effect the establishment, operation, and maintenance of such zones, all in accordance with the Act of Congress and other applicable laws and rules.

SECTION 84. Section 10-19.1-152 of the North Dakota Century Code is created and enacted as follows:

10-19.1-152. Audit reports and audit of corporations receiving state subsidies for production of alcohol or methanol for combination with gasoline. Any corporation that produces agricultural ethyl alcohol or methanol within this state and which receives a production subsidy from the state, whether in the form of reduced taxes or otherwise, shall submit an annual audit report, prepared by a certified public accountant based on an audit of all records and accounts of the corporation, to the legislative audit and fiscal review committee. The audit must be submitted within ninety days of the close of the corporation's taxable year. Upon request of the legislative audit and fiscal review committee, the state auditor shall conduct an audit of the records and accounts of any corporation required to submit an annual report under this section.

SECTION 85. AMENDMENT. Section 10-31-01 of the North Dakota Century Code is amended and reenacted as follows:

10-31-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Create" means to form an organization by:
 - a. Incorporating a professional corporation;
 - b. Organizing a professional limited liability company; or
 - c. Registering a professional limited liability partnership.
2. "Executive" means an officer or a director of a professional corporation, a manager or a governor of a professional limited liability company, or a partner of a professional limited liability partnership.
3. "Foreign limited liability partnership" has the meaning set forth in section 45-22-01.4.

4. 4. "Foreign professional organization" means a professional organization that is created under laws other than the laws of this state for purposes for which a professional organization may be created under this chapter.
4. 5. "Owner" means a shareholder of a professional corporation, a member of a professional limited liability company, or a partner of a limited liability partnership.
5. 6. "Professional corporation" or "corporation" means a corporation that is incorporated under this chapter for the ~~sole and specific~~ purpose of rendering professional service and which has as its shareholders only individuals who themselves are licensed or otherwise legally authorized within this state to render the same professional service as the corporation or nonlicensed employees as provided in section 10-31-07.1.
6. 7. "Professional limited liability company" or "limited liability company" means a limited liability company that is organized under this chapter for the ~~sole and specific~~ purpose of rendering professional service and which has as its members only individuals who themselves are licensed or otherwise legally authorized within this state to render the same professional service as the limited liability company or nonlicensed employees as provided in section 10-31-07.2.
7. 8. "Professional limited liability partnership" or "limited liability partnership" means a limited liability partnership that is registered under this chapter for the ~~sole and specific~~ purpose of rendering professional service, is not a foreign limited liability partnership, and has as its partners only individuals who are licensed or otherwise legally authorized within this state to render the same professional service as the limited liability partnership or nonlicensed employees as provided in section 10-31-07.1.
8. 9. "Professional organization" or "organization" means:
- a. A professional corporation that is incorporated under this chapter;
 - b. A professional limited liability company that is organized under this chapter; or
 - c. A professional limited liability partnership that is registered under this chapter.
9. 10. "Professional service" means the personal service to the public which requires a license as a condition precedent to the rendering of such service and which ~~prior to~~ before the passage of this chapter could not be performed by a corporation, limited liability company, or a limited liability partnership.

SECTION 86. AMENDMENT. Section 10-31-02 of the North Dakota Century Code is amended and reenacted as follows:

10-31-02. Articles of incorporation.

1. One or more individuals may incorporate a professional organization in the form of a corporation for the practice of a profession by filing articles of incorporation with the secretary of state. The articles of

incorporation must meet the requirements of chapter 10-19.1 and contain the following:

- a. The profession to be practiced through the professional corporation; and
 - b. The names and residence addresses of all of the original shareholders of the professional corporation who will practice the profession in this state.
2. At the time the articles of incorporation are filed with the secretary of state, the professional corporation also shall file a certificate from the regulating board of the profession involved that each of the directors and shareholders of voting shares who will practice the profession in this state, if any, is licensed to practice the profession in this state.

SECTION 87. AMENDMENT. Section 10-31-02.1 of the North Dakota Century Code is amended and reenacted as follows:

10-31-02.1. Articles of organization.

1. Two or more individuals may organize a professional organization in the form of a limited liability company for the practice of a profession by filing articles of organization with the secretary of state. The articles of organization must meet the requirements of chapter 10-32, and must contain the following:
 - a. The profession to be practiced through the professional limited liability company; and
 - b. The names and residence addresses of all of the original members of the professional limited liability company who will practice the profession in this state.
2. At the time the articles of organization are filed with the secretary of state, the professional limited liability company also shall file a certificate from the regulating board of the profession involved that each of the governors and members who will practice the profession in this state, if any, is licensed to practice the profession in this state.

SECTION 88. AMENDMENT. Section 10-31-02.2 of the North Dakota Century Code is amended and reenacted as follows:

10-31-02.2. Registration.

1. Two or more individuals may register a professional organization in the form of a limited liability partnership or a foreign professional organization in the form of a foreign limited liability partnership for the practice of a profession by filing a the registration required under section 45-22-3 with the secretary of state. The registration must meet the requirements of chapter 45-22, and contain the following:
 - a. The profession to be practiced through the professional limited liability partnership or foreign limited liability partnership; and

- b. The names and residence addresses of all of the ~~original~~ partners of the professional limited liability partnership or foreign limited liability partnership who will practice the profession in this state.
2. At the time the registration is filed with the secretary of state, the professional limited liability partnership or foreign limited liability partnership also shall file a certificate from the regulating board of the profession involved that each of the partners who will practice the profession in this state is licensed to practice the profession in this state.

SECTION 89. AMENDMENT. Section 10-31-03 of the North Dakota Century Code is amended and reenacted as follows:

10-31-03. Applicability of ~~chapters~~ chapter 10-19.1; ~~10-22, and 10-23.~~ ~~Chapters~~ Chapter 10-19.1; ~~40-22, and 40-23~~ apply ~~applies~~ to a professional organization that is created in the form of a corporation and which enjoys the powers and privileges and is subject to the duties, restrictions, and liabilities of other corporations except where inconsistent with the letter and purpose of this chapter. This chapter takes precedence in the event of any conflict with ~~chapters~~ chapter 10-19.1; ~~40-22, and 40-23.~~

SECTION 90. AMENDMENT. Section 10-31-04 of the North Dakota Century Code is amended and reenacted as follows:

10-31-04. Purpose for which created.

1. A professional organization may be created pursuant to this chapter only for the purpose of rendering one specific type of professional service and services ancillary ~~to thereto~~ or for the purpose of rendering two or more kinds of professional services that are specifically authorized to be practiced in combination under the licensing laws of each of the professional services to be practiced by a licensed individual or partnership of licensed individuals and ancillary services. This subsection does not preclude an organization created pursuant to this chapter from rendering more than one specific type of professional service if the services rendered are set forth in chapters 43-03 and 43-19.1 or if the services rendered are set forth in chapters 43-26 and 43-40.
2. A professional organization may not engage in any business other than rendering the professional service for which it was created to render and services ancillary thereto. However, a professional organization may own real and personal property necessary or appropriate for rendering the type of professional services it was created to render and may invest its funds in real estate mortgages, stocks, bonds, membership interests, and any other type of investment.

SECTION 91. AMENDMENT. Section 10-31-05 of the North Dakota Century Code is amended and reenacted as follows:

10-31-05. Name.

1. The name of a professional organization:
 - a. In the form of a corporation incorporated under this chapter must contain:

- (1) The word "chartered";
 - (2) The word "limited" or the abbreviation "Ltd.";
 - (3) The words "professional corporation" or either the abbreviation "P.C." or the abbreviation "PC", either of which may be used interchangeably for all purposes authorized by chapter 10-31, including real estate matters, contracts, and filings with the secretary of state; or
 - (4) The words "professional association" or either the abbreviation "P.A." or the abbreviation "PA", either of which may be used interchangeably for all purposes authorized by chapter 10-31, including real estate matters, contracts, and filings with the secretary of state.
- b. In the form of a limited liability company organized under this chapter must contain:
- (1) The words "professional limited liability company" or "limited liability company";
 - (2) The abbreviations:
 - (a) "P.L.C." or "PLC", either of which may be used interchangeably for all purposes authorized by chapter 10-31 including real estate matters, contracts, and filings with the secretary of state; ~~or~~
 - ~~(3)~~ (b) ~~The abbreviations~~ "P.L.L.C." or "PLLC", either of which may be used interchangeably for all purposes authorized by chapter 10-31 including real estate matters, contracts, and filings with the secretary of state; or
 - (c) "L.L.C." or "LLC", either of which may be used interchangeably for all purposes authorized by chapter 10-31 including real estate matters, contracts, and filings with the secretary of state.
- c. In the form of a limited liability partnership registered under this chapter shall contain:
- (1) The words "professional limited liability partnership"; or
 - (2) The abbreviations:
 - (a) "P.L.L.P." or "PLLP", either of which may be use d interchangeably for all purposes authorized by chapter 10-31 including real estate matters, contracts, and filings with the secretary of state; or
 - (b) "L.L.P." or "LLP", either of which may be used interchangeably for all purposes authorized by chapter 10-31 including real estate matters, contracts, and filings with the secretary of state.

2. The use of the word "~~company~~", "~~corporation~~", "~~incorporated~~", "~~limited liability company~~", "~~limited liability partnership~~", or any other word, abbreviation, affix, or prefix indicating that it is a corporation, limited liability company, or limited liability partnership in the name of an organization created under this chapter, other than the words and abbreviations set forth in subsection 1, is prohibited.

SECTION 92. AMENDMENT. Section 10-31-07 of the North Dakota Century Code is amended and reenacted as follows:

10-31-07. Issuance and transfer of shares. A professional organization in the form of a corporation may issue its shares only to ~~individuals~~ persons who are licensed to render the same specific professional services as those for which the corporation was incorporated or as provided by section 10-31-07.1. A shareholder may voluntarily transfer shares in a professional corporation only to ~~the corporation or to an individual~~ a person owning or eligible to own the same type of shares as the ~~individual~~ person making the transfer. The issuance of any shares in violation of this section is void. The voluntary transfer of any shares in violation of this section is void. No share may be transferred upon the books of the professional corporation or issued by the professional corporation until there is presented to and filed with the corporation a certificate from the regulating board stating that the ~~individual~~ person to whom the transfer is to be made or the share issued is licensed to render the same specific professional services as those for which the corporation was incorporated.

SECTION 93. AMENDMENT. Section 10-31-07.1 of the North Dakota Century Code is amended and reenacted as follows:

10-31-07.1. Retirement plan trust - Voting and nonvoting ~~stock~~ shares. A professional corporation may establish a retirement plan trust which allows the corporation to contribute nonvoting shares for nonlicensed employees and voting shares for licensed employees.

SECTION 94. AMENDMENT. Section 10-31-07.2 of the North Dakota Century Code is amended and reenacted as follows:

10-31-07.2. Issuance and transfer of membership interests. A professional organization in the form of a limited liability company may issue membership interests only to ~~individuals~~ persons who are licensed to render the same specific professional services as those for which the company was organized. A member may voluntarily transfer membership interests in a professional limited liability company only to ~~the professional limited liability company or to an individual~~ a person owning or eligible to own a membership interest. The reflection of any membership interests in the required records of the professional limited liability company in violation of this section is void. The voluntary transfer of any membership interests in violation of this section is void. No membership interest may be reflected in the required records of the professional limited liability company until there is presented to and filed with the limited liability company a certificate from the regulating board stating that the ~~individual~~ person to whom the transfer is to be made or the membership interest issued is licensed to render the same specific professional services as those for which the limited liability company was organized.

SECTION 95. AMENDMENT. Section 10-31-07.3 of the North Dakota Century Code is amended and reenacted as follows:

10-31-07.3. Issuance and transfer of partnership interests. A professional organization in the form of a limited liability partnership may issue partnership interests only to ~~individuals~~ persons who are licensed to render the same specific professional services as those for which the partnership was registered. A partner may voluntarily transfer partnership interests in a professional limited liability partnership only to ~~the professional limited liability partnership or an individual~~ a person owning or eligible to own a partnership interest. The issuance of any partnership interests issued in violation of this section is void. The voluntary transfer of any partnership interests in violation of this section is void. No partnership interest may be transferred upon the books of the professional limited liability partnership or issued by the professional limited liability partnership until there is presented to and filed with the limited liability partnership a certificate from the regulating board stating that the ~~individual~~ person to whom the transfer is to be made or the partnership interest issued is licensed to render the same specific professional services as those for which the limited liability partnership was registered.

SECTION 96. AMENDMENT. Section 10-31-12 of the North Dakota Century Code is amended and reenacted as follows:

10-31-12. Death of last or only shareholder - Amendment of articles of incorporation - Involuntary dissolution.

1. In the event of the death of the last or only shareholder of a professional corporation whose shares pass to heirs by intestate succession, to devisees under a last will and testament, or otherwise pass by operation of law to an individual not legally qualified to render the professional services which the professional corporation was incorporated to perform, the heirs, devisees, or personal representative of the deceased shareholder, within six months after the date of death of the last or only shareholder, may amend the articles of incorporation to provide that the corporation must continue as a ~~general~~ corporation under ~~chapters~~ chapter 10-19.1; 10-22; and 10-23.
2. The death of the last or only shareholder of a professional corporation and the failure of the heirs, devisees, or personal representative to make an amendment within six months after the death is a ground for the involuntary dissolution of the professional corporation.
3. When notified of the facts, the secretary of state shall certify immediately the facts to the attorney general who shall take immediate appropriate action to dissolve the professional corporation.

SECTION 97. AMENDMENT. Section 10-31-13 of the North Dakota Century Code is amended and reenacted as follows:

10-31-13. Professional organizations - Annual reports - Renewal.

1. With respect to a professional organization in the form of a corporation:
 - a. Each corporation incorporated under this chapter shall file with the secretary of state an annual report at the time specified for the filing of the report by ~~chapters~~ chapter 10-19.1; 10-22; and 10-23 giving the name and residence addresses of all officers, directors, and shareholders of the corporation as of the thirtieth day of June next

preceding the filing of the report. With respect to shares, the report shall include:

- (1) A statement of the aggregate number of shares the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class; and
 - (2) A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
- b. ~~Attached to this~~ The report must be include a form certifying statement that all directors and shareholders of voting shares who practice in this state are licensed to render the same specific professional services as those for which the corporation was incorporated. ~~This certificate~~ The report must be:
- (1) Made on a form as prescribed and furnished by the secretary of state;
 - (2) Signed by the president or vice president ~~and attested by the secretary or assistant secretary~~ of the corporation; and
 - (3) ~~Sworn to before a notary public by the individuals executing the certificate; and~~
 - ~~(4)~~ Accompanied by the filing fee prescribed in chapter ~~40-23~~ 10-19.1.
- c. A copy of the ~~certificate~~ report must be filed at the same time with the regulatory board that licenses the shareholders described in the ~~certificate~~ report. No filing fee may be charged by the regulatory board.
- d. A regulatory board issuing a license under section 10-31-01 shall issue a certificate required in section 10-31-02. The certificate must be on a form prescribed and furnished by the secretary of state. The regulatory board may charge and collect a fee not to exceed twenty dollars per individual certified to be licensed by the regulating board.
2. With respect to a professional organization in the form of a limited liability company:
- a. Each limited liability company organized under this chapter shall file with the secretary of state an annual report at the time specified for the filing of the report by chapter 10-32 giving the name and residence address of all managers, governors, and members of the organization as of the thirtieth day of June next preceding the filing of the report.
 - b. ~~Attached to this~~ The report must be include a form certifying statement that all governors and members holding voting membership interests who practice in this state are licensed to render the same specific professional services as those for which the

limited liability company was organized. This certificate report must be:

- (1) Made on a form as prescribed and furnished by the secretary of state;
 - (2) Signed by the president ~~and attested by the secretary or vice president~~ of the limited liability company; and
 - (3) ~~Sworn before a notary public by the individuals executing the certificate; and~~
 - ~~(4)~~ Accompanied by the filing fee prescribed in section 10-32-180.
- c. A copy of the certificate report must be filed at the same time with the regulatory board that licenses the members described in the certificate report. No filing fee may be charged by the regulatory board.
- d. A regulatory board issuing a license under section 10-31-01 shall issue a certificate required in section 10-31-02. The certificate must be on a form prescribed and furnished by the secretary of state. The regulatory board may charge and collect a fee not to exceed twenty dollars per individual certified to be licensed by the regulatory board.
3. With respect to a professional organization in the form of a limited liability partnership:
- a. The renewal registration filed with the secretary of state pursuant to chapter 45-22 must include the name and residence address of all partners of the organization as of the thirtieth day of June next preceding the filing of the renewal registration.
 - b. ~~Attached to the~~ The renewal registration must include a form certifying statement that all partners holding voting partnership interests who practice in this state are licensed to render the same specific professional services as those for which the limited liability partnership was registered. ~~This certificate~~ The renewal registration shall be:
 - (1) Made on a form prescribed and furnished by the secretary of state;
 - (2) Signed by ~~two~~ a managing ~~partners~~ partner of the limited liability partnership; and
 - (3) ~~Sworn before a notary public by the individuals executing the certificate; and~~
 - ~~(4)~~ Accompanied by the filing fee prescribed in section 45-22-22.
 - c. A copy of the certificate renewal registration must be filed at the same time with the regulatory board that licenses the partners described in the certificate renewal registration. No filing fee may be charged by the regulatory board.

- d. A regulatory board issuing a license under section 10-31-01 shall issue a certificate required in section 10-31-02. The certificate must be on a form prescribed and furnished by the secretary of state. The regulatory board may charge and collect a fee not to exceed twenty dollars per individual certified to be licensed by the regulating board.

SECTION 98. AMENDMENT. Section 10-31-13.1 of the North Dakota Century Code is amended and reenacted as follows:

10-31-13.1. Foreign professional organizations - Practice in the state.

1. A foreign professional organization may practice a profession in this state only through executives, owners, employees, and agents who are licensed to practice the profession in this state. ~~The provisions of this chapter with respect to the practice of a profession by a professional organization apply to a foreign professional organization.~~ The practice of a profession in this state by a foreign professional organization is subject to the laws and regulations of this state governing the practice of such professional service.
2. The certificate of authority of a foreign professional organization may be revoked by the secretary of state as provided in this chapter, if the foreign professional organization fails to comply with this chapter.
3. This chapter does not prohibit the practice of a profession in this state by an individual who is an executive, owner, employee, or agent of a foreign professional organization, if the individual could lawfully practice the profession in this state in the absence of any relationship to a foreign professional organization.
4. This section applies regardless of whether the foreign professional organization is authorized to practice a profession in this state.
5. A foreign professional organization may render only one specific type of professional service and services ancillary thereto in this state. A foreign professional organization may not engage in any business in this state other than rendering the professional service it is authorized to render and services ancillary thereto.
6.
 - a. The provisions of chapter 10-19.1, applicable to foreign corporations, apply to a foreign professional organization rendering professional services in this state in the form of a foreign corporation. Such a foreign professional organization enjoys the powers and privileges and is subject to the duties, restrictions, and liabilities of other foreign corporations doing business in this state, except where inconsistent with the letter and purpose of the provisions of this chapter applicable to foreign professional organizations.
 - b. A foreign professional organization rendering professional services in this state in the form of a foreign corporation shall include in its application for a certificate of authority under section 10-19.1-135 or its annual report under section 10-19.1-146 the following information:

- (1) The profession to be practiced by the foreign corporation;
 - (2) The names and residence addresses of all directors and shareholders of the corporation who practice the profession in this state; and
 - (3) In an application for a certificate of authority, a certificate from the regulating board of the profession involved that all directors and shareholders who practice the profession in this state are licensed in this state to render the same professional service as those for which the corporation was formed; and in an annual report, a statement that all directors and shareholders who practice the profession in this state are licensed in this state to render the same professional service as those for which the corporation was formed.
7.
 - a. The provisions of chapter 10-32 applicable to foreign limited liability companies apply to a foreign professional organization rendering professional services in this state in the form of a foreign limited liability company. Such a foreign professional organization enjoys the powers and privileges and is subject to the duties, restrictions, and liabilities of other foreign limited liability companies doing business in this state, except where inconsistent with the letter and purpose of the provisions of this chapter applicable to foreign professional organizations.
 - b. A foreign professional organization rendering professional services in this state in the form of a foreign limited liability company shall include in its application for a certificate of authority under section 10-32-138 or its annual report under section 10-32-149 the following information:
 - (1) The profession to be practiced by the foreign limited liability company;
 - (2) The names and residence addresses of all members or managers of the limited liability company who practice the profession in this state; and
 - (3) In an application for a certificate of authority, a certificate from the regulating board of the profession involved that all members or managers who practice the profession in this state are licensed in this state to render the same professional service as those for which the limited liability company was formed; and in an annual report, a statement that all members or managers who practice the profession in this state are licensed in this state to render the same professional service as those for which the limited liability company was formed.
8.
 - a. The provisions of chapter 45-22 applicable to foreign limited liability partnerships apply to a foreign professional organization rendering professional services in this state in the form of a foreign limited liability partnership. Such a foreign professional organization enjoys the powers and privileges and is subject to the duties, restrictions, and liabilities of other foreign limited liability

partnerships doing business in this state, except where inconsistent with the letter and purpose of the provisions of this chapter applicable to foreign professional organizations.

- b. A foreign professional organization rendering professional services in this state in the form of a foreign limited liability partnership shall include in its registration or renewal registration under section 45-22-03 the following information:
- (1) The profession to be practiced by the foreign limited liability partnership;
 - (2) The names and residence addresses of all partners of the limited liability partnership who practice the profession in this state; and
 - (3) In a registration, a certificate from the regulating board of the profession involved that all partners who practice the profession in this state are licensed in this state to render the same professional service as those for which the limited liability partnership was formed; and in a renewal registration, a statement that all partners who practice the profession in this state are licensed in this state to render the same professional service as those for which the limited liability partnership was formed.
9. The name of a foreign professional organization rendering professional services in this state shall contain words or abbreviations required or authorized by the laws of the jurisdiction in which the foreign professional organization is incorporated, organized, or originally registered.

SECTION 99. AMENDMENT. Section 10-32-02 of the North Dakota Century Code is amended and reenacted as follows:

10-32-02. Definitions. For the purposes of this chapter, unless the language or context clearly indicates that a different meaning is intended:

1. "Acquiring organization" means the foreign or domestic limited liability company or foreign or domestic corporation that acquires in an exchange the shares of a domestic or foreign corporation or the membership interests of a limited liability company.
2. "Address" means ~~mailing address, including a zip code;~~
 - a. In the case of a registered office or principal executive office, ~~the term means~~ the mailing address ~~and, including a zip code,~~ of the actual office location which may not be only a post-office box; and
 - b. In all other cases, the mailing address, including a zip code.
3. "Agreement to give ~~transfer~~ dissolution avoidance consent" means a member-control agreement under section 10-32-50, or a part of a member-control agreement, under which the members agree in advance ~~to give any~~ that if, in the future, the continued membership of any member is terminated through an event covered in the agreement, then

each remaining member shall give dissolution avoidance consent referred to in subsection 2 of section 10-32-32.

4. "Articles" or "articles of organization" means:
 - a. In the case of a limited liability company organized under this chapter, articles of organization, articles of amendment, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of membership interests, articles of merger, articles of abandonment, and articles of termination.
 - b. In the case of a foreign limited liability company, the term includes all documents serving a similar function required to be filed with the secretary of state or other state office of the limited liability company's state of organization.
5. "Board" or "board of governors" means the board of governors of a limited liability company.
6. "Board member" means:
 - a. An individual serving on the board of governors in the case of a limited liability company; and
 - b. An individual serving on the board of directors in the case of a corporation.
7. "Business continuation agreement" means a member-control agreement under section 10-32-50, or a part of a member-control agreement, made before or after the limited liability company has incurred an event of dissolution, under which the members:
 - a. Agree that, despite any dissolution, winding up and termination of the limited liability company as a legal entity, its business will be continued in a successor organization through a merger, transfer of assets, transfer of membership interests, or otherwise; and
 - b. Specify the terms and conditions under which the business continuation will occur.
8. "Class", when used with reference to membership interests, means a category of membership interests which differs in one or more rights or preferences from another category of membership interests of the limited liability company.
9. "Closely held limited liability company" means a limited liability company that does not have more than thirty-five members.
10. "Constituent organization" means a limited liability company or a domestic or foreign corporation that is a party to a merger or an exchange.
11. "Contribution agreement" means an agreement between a person and a limited liability company under which:

- a. The person agrees to make a contribution in the future; and
 - b. The limited liability company agrees that, at the time specified for the contribution in the future, the limited liability company will accept the contribution and reflect the contribution in the required records.
12. "Contribution allowance agreement" means an agreement between a person and a limited liability company under which:
- a. The person has the right, but not the obligation, to make a contribution in the future; and
 - b. The limited liability company agrees that, if the person makes the specified contribution at the time specified in the future, the limited liability company will accept the contribution and reflect the contribution in the required records.
13. "Dissolution" means that the limited liability company has incurred an event under subsection 1 of section 10-32-109, subject only to sections 10-32-116 and 10-32-124, that obligates the limited liability company to wind up its affairs and to terminate its existence as a legal entity.
14. "Dissolution avoidance consent" means the consent of all remaining members:
- a. Given, as provided in subdivision e of subsection 1 of section 10-32-109, after the occurrence of any event that terminates the continued membership of a member in the limited liability company; and
 - b. That the limited liability company must be continued as a legal entity without dissolution.
15. "Distribution" means a direct or indirect transfer of money or other property, other than its own membership interests, with or without consideration, or an incurrence or issuance of indebtedness, by a limited liability company to any of its members in respect of membership interests. A distribution may be in the form of an interim distribution or a termination distribution, or as consideration for the purchase, redemption, or other acquisition of its membership interests, or otherwise.
16. "Domestic corporation" means a corporation other than a foreign corporation organized for profit and incorporated under or governed by chapter 10-19.1.
17. "Filed with the secretary of state" means ~~that a signed original of a document together with the fees provided in section 10-32-150, has been delivered to the secretary of state and has been determined by the secretary of state to conform to law. The secretary of state shall endorse on the original the word "Filed" and the month, day, and year of filing, and record the document in the office of the secretary of state.;~~

- a. That either of the following has been delivered to the secretary of state and has been determined by the secretary of state to conform to law:
 - (1) A signed original or a legible facsimile copy of a signed original of a request for reserved name; or
 - (2) A signed original of all other documents, meeting the applicable requirements of this chapter, together with the fees provided in section 10-33-141.
 - b. That the secretary of state shall then:
 - (1) Endorse on the original the word "filed" and the month, day, and year; and
 - (2) Record the document in the office of the secretary of state.
18. "Financial rights" means a member's rights:
- a. To share in profits and losses as provided in section 10-32-36;
 - b. To share in distributions as provided in section 10-32-60;
 - c. To receive interim distributions as provided in section 10-32-61; and
 - d. To receive termination distributions as provided in subdivision c of subsection 1 of section 10-32-131.
19. "Foreign corporation" means a corporation organized for profit that is incorporated under laws other than the laws of this state for a purpose ~~or purposes~~ for which a corporation may be incorporated under chapter 10-19.1.
20. "Foreign limited liability company" means a limited liability company organized for profit which is organized under laws other than the laws of this state for a purpose ~~or purposes~~ for which a limited liability company may be organized under this chapter.
21. "Good faith" means honesty in fact in the conduct of the act or transaction concerned.
22. "Governance rights" means all of a member's rights as a member in the limited liability company other than financial rights and the right to assign financial rights.
23. "Governing board" means:
- a. The board of governors in the case of a limited liability company; and
 - b. The board of directors in the case of a corporation.
24. "Governor" means an individual serving on the board of governors.

25. "Intentionally" means that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a statute if:
- a. If the person intentionally does the act or causes the result prohibited by the statute; or if
 - b. If the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.
26. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A person does not "know" or have "knowledge" of a fact merely because the person has reason to know of the fact.
27. "Legal representative" means a person empowered to act for another person, including an agent, manager, officer, partner, or associate of an organization; a trustee of a trust; a personal representative; ~~an executor of a will; an administrator of an estate;~~ a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator ~~of the person or estate of a person.~~
28. "Limited liability company" means a limited liability company, other than a foreign limited liability company, organized under this chapter.
29. "Manager" means a ~~person~~:
- a. An individual who is eighteen years of age or more and who is elected, appointed, or otherwise designated as a manager by the board of governors; and ~~any other person~~
 - b. An individual considered elected as a manager pursuant to section 10-32-92.
30. "Member" means a person reflected in the required records of a limited liability company as the owner of some governance rights of a membership interest of the limited liability company.
31. "Membership interest" means a:
- a. A member's interest in a limited liability company consisting of a member's financial rights; a;
 - b. A member's right to assign financial rights as provided in section 10-32-31; a;
 - c. A member's governance rights; and a
 - d. A member's right to assign governance rights as provided in section 10-32-32.
32. "Notice" is given by a member of a limited liability company to the limited liability company or a manager of a limited liability company when in writing and mailed or delivered to the limited liability company

or the manager at the registered office or principal executive office of the limited liability company.

- a. In all other cases, notice is given to a person:
 - (1) When mailed to the person at an address designated by the person or at the last known address of the person;
 - (2) When handed to the person; or
 - (3) When left at the office of the person with a clerk or other person in charge of the office; or
 - (a) If there is no one in charge, when left in a conspicuous place in the office; or
 - (b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion who is residing there.
 - b. Notice by mail is given when deposited in the United States mail with sufficient postage affixed.
 - c. Notice is considered received when it is given.
33. "Operating agreement" means rules, resolutions, or other provisions, regardless how designated, that:
- a. Relate to the management of the business or the regulation of the affairs of the limited liability company; and
 - b. Have been made expressly part of the operating agreement by the action, taken from time to time under section 10-32-69, by the board of governors or the members.
34. "Organization" means a, whether domestic or foreign, a limited liability company, corporation, partnership, limited partnership, limited liability partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.
35. "Owners" means:
- a. Members in the case of a limited liability company; and
 - b. Shareholders in the case of a corporation.
36. "Ownership interests" means:
- a. Membership interests in the case of a limited liability company; and
 - b. Shares in the case of a corporation.
37. "Parent" of a specified limited liability company means a limited liability company or corporation that directly or indirectly owns more than fifty

percent of the voting power of the membership interests entitled to vote for governors of the specified limited liability company.

38. "Pertains" means a contribution "pertains":
- a. To a particular series when the contribution is made in return for a membership interest in that particular series.
 - b. To a particular class when the class has no series and the contribution is made in return for a membership interest in the class.
- A contribution that pertains to a series does not pertain to the class of which the series is a part.
39. "Principal executive office" means:
- a. If the limited liability company has an elected or appointed president, an office where the elected or appointed president of the limited liability company has an office-; or
 - b. If the limited liability company has no elected or appointed president, "~~principal executive office~~" means the registered office of the limited liability company.
40. "Registered office" means the place in this state designated in the articles ~~of organization~~ as the registered office of the limited liability company.
41. "~~Related organization~~" ~~of a specified limited liability company means a parent or subsidiary of the specified limited liability company or another subsidiary of a parent of the specified limited liability company means~~ an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:
- a. Owens, directly or indirectly, at least fifty percent of the shares, membership interests, or other ownership interests of another organization;
 - b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or more of the voting members of the governing body of another organization; or
 - c. Has the power, directly or indirectly, to direct or cause the direction of the management and policies of another organization, whether through the ownership of voting interests, by contract, or otherwise.
42. "Required records" are those records required to be maintained under section 10-32-51.
43. "Security" has the meaning given it in subsection 13 of section 10-04-02.
44. "Series" means a category of membership interests, within a class of membership interests, that has some of the same rights and preferences as other membership interests within the same class, but that differ in

one or more rights and preferences from another category of membership interests within that class.

45. "Signed" means that the signature of a person has been placed on a document, as provided in subsection 39 of section 41-01-11, and, with respect to a document ~~required~~:
- a. Required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter, the articles of organization or operating agreement or a resolution approved by the affirmative vote of the required proportion or number of governors or the required proportion of the voting power of membership interests present and entitled to vote: ~~A signature on a document not~~; and
 - b. Not required by this chapter to be filed with the secretary of state, the signature may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on the document.
46. "Subsidiary" of a specified limited liability company means:
- a. A limited liability company having more than fifty percent of the voting power of its membership interests entitled to vote for governors owned directly or indirectly by the specified limited liability company; or
 - b. A corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly or indirectly by the specified limited liability company.
47. "Successor organization" means an organization that, pursuant to a business continuation agreement or an order of the court under subsection 6 of section 10-32-119, continues the business of the dissolved and terminated limited liability company.
48. "Surviving organization" means the foreign or domestic limited liability company or domestic or foreign corporation resulting from a merger.
49. "Termination" means the end of a limited liability company's existence as a legal entity and occurs when a notice of termination is:
- a. Filed with the secretary of state under section 10-32-117 together with the fees provided in section 10-32-150; or
 - b. Is considered filed with the secretary of state under subdivision c of subsection 2 of section 10-32-106 together with the fees provided in section 10-32-150.
50. "Vote" includes authorization by written action.
51. "Winding up" means the period triggered by dissolution during which the limited liability company ceases to carry on its business, except to the extent necessary for concluding its affairs, and disposes of its assets under section 10-32-131.

52. "Written action" means a written document signed by all of the persons required to take the action described. The term also means the counterparts of a written document signed by any of the persons taking the action described. Each counterpart constitutes the action of the persons signing it, and all the counterparts, taken together, constitute one written action by all of the persons signing them.

SECTION 100. AMENDMENT. Section 10-32-06 of the North Dakota Century Code is amended and reenacted as follows:

10-32-06. Two-member requirement. ~~A~~ Unless otherwise provided in the articles of organization, a limited liability company must have two or more members at the time of its formation. A ~~Unless a one-member limited liability company is authorized in the articles of organization, a limited liability company must be dissolved under subdivision e of subsection 1 of section 10-32-109 whenever the limited liability company ceases to have at least two members unless the remaining member admits a new member within ninety days of the termination of the continued membership of the former member.~~

SECTION 101. AMENDMENT. Section 10-32-07 of the North Dakota Century Code is amended and reenacted as follows:

10-32-07. Articles of organization.

1. The articles of organization must contain:
 - a. The name of the limited liability company;
 - b. The address of the principal executive office;
 - c. The address of the registered office of the limited liability company and the name of its registered agent at that address;
 - d. The name and address of each organizer;
 - e. The effective date of organization:
 - (1) If a later date than that on which the certificate of organization is issued by the secretary of state; and
 - (2) Which may not be later than ninety days after the date on which the certificate of organization is issued;
 - f. A statement stating in years that the limited period of existence for the limited liability company must be a period of thirty years or less from the date the articles of organization are filed with the secretary of state, unless the articles of organization expressly authorize a shorter or longer period of duration;
 - g. A statement as to whether upon the occurrence of any event under subdivision e of subsection 1 of section 10-32-109 that terminates the continued membership of a member in the limited liability company, the remaining members will have the power to avoid dissolution by giving dissolution avoidance consent; ~~and~~

- ~~g.~~ h. A statement as to whether the members have the power to enter into a business continuation agreement-; and
 - i. A statement as to whether fewer than two members shall be permitted.
2. The following provisions govern a limited liability company unless modified in the articles of organization or a member central agreement under section 10-32-50:
 - a. A limited liability company has general business purposes {as provided in section 10-32-04};
 - b. A limited liability company has certain powers {as provided in section 10-32-23};
 - c. The power to adopt, amend, or repeal the operating agreement is vested in the board of governors {as provided in section 10-32-68};
 - d. A limited liability company must allow cumulative voting for governors {as provided in section 10-32-76};
 - e. The affirmative vote of a majority of governors present is required for an action of the board of governors {as provided in section 10-32-83};
 - f. A written action by the board of governors taken without a meeting must be signed by all governors {as provided in section 10-32-84};
 - g. The board may accept contributions, make contribution agreements, and make contribution allowance agreements {as provided in subsection 1 of section 10-32-56 and sections 10-32-58 and 10-32-59};
 - h. All membership interests are ordinary membership interests entitled to vote and are of one class with no series {as provided in subdivisions a and b of subsection 5 of section 10-32-56};
 - i. All membership interests have equal rights and preferences in all matters not otherwise provided for by the board of governors {as provided in subdivision b of subsection 5 of section 10-32-56};
 - j. The restatement of value of previous contributions is to be determined according to a specified process {as provided in subsections 3 and 4 of section 10-32-57};
 - k. A member has certain preemptive rights, unless otherwise provided by the board of governors {as provided in section 10-32-37};
 - l. The affirmative vote of the owners of a majority of the voting power of the membership interests present and entitled to vote at a duly held meeting is required for an action of the members, except where this chapter requires the affirmative vote of a majority of the voting power of all membership interests entitled to vote {as provided in subsection 1 of section 10-32-43};

- m. The voting power of each membership interest is in proportion to the value reflected in the required records of the contributions of the members {as provided in section 10-32-45};
 - n. Members share in distributions in proportion to the value reflected in the required records of the contributions of members {as provided in section 10-32-60};
 - o. Members share profits and losses in proportion to the value reflected in the required records of the contributions of members {as provided in section 10-32-36};
 - p. A written action by the members taken without a meeting must be signed by all members {as provided in section 10-32-43};
 - q. Members have no right to receive distributions in kind and the limited liability company has only limited rights to make distributions in kind {as provided in section 10-32-62};
 - r. A member is not subject to expulsion {as provided in subsection 2 of section 10-32-30};
 - s. Unanimous consent is required for the transfer of governance rights to a person not already a member {as provided in subsection 2 of section 10-32-32}; ~~and~~
 - t. Unanimous consent is required to avoid dissolution {as provided in subdivision e of subsection 1 of section 10-32-109}; and
 - u. A limited liability company dissolves upon an occurrence of an event that terminates the continued membership of any member as provided in subsection 1 of section 10-32-109.
3. The following provisions govern a limited liability company unless modified either in the articles of organization, a member central agreement under section 10-32-50, or in the operating agreement:
- a. Governors serve for an indefinite term that expires at the next regular meeting of members {as provided in section 10-32-72};
 - b. The compensation of governors is fixed by the board of governors {as provided in section 10-32-74};
 - c. A certain method must be used for removal of governors {as provided in section 10-32-78};
 - d. A certain method must be used for filling board of governor vacancies {as provided in section 10-32-79};
 - e. If the board of governors fails to select a place for a board meeting, it must be held at the principal executive office {as provided in subsection 1 of section 10-32-80};
 - f. ~~A governor may call a board of governors meeting; and the~~ The notice of ~~the~~ a board of governors meeting need not state the

- purpose of the meeting {as provided in subsection 3 of section 10-32-80};
- g. A majority of the board of governors is a quorum for a board meeting {as provided in section 10-32-82};
 - h. A committee consists of one or more individuals, who need not be governors, appointed by affirmative vote of a majority of the governors present {as provided in subsection 2 of section 10-32-85};
 - i. The board may establish a special litigation committee {as provided in section 10-32-85};
 - j. The president and treasurer have specified duties, until the board of governors determines otherwise {as provided in section 10-32-89};
 - k. Managers may delegate some or all of their duties and powers, if not prohibited by the board of governors from doing so {as provided in section 10-32-95};
 - l. Regular meetings of members need not be held, unless demanded by a member under certain conditions {as provided in section 10-32-38};
 - m. In all instances where a specific minimum notice period has not otherwise been fixed by law, not less than ten days' notice is required for a meeting of members {as provided in subsection 2 of section 10-32-40};
 - n. For a quorum at a members' meeting there is required a majority of the voting power of the membership interests entitled to vote at the meeting {as provided in section 10-32-44};
 - o. The board of governors may fix a date up to fifty days before the date of a members' meeting as the date for the determination of the members entitled to notice of and entitled to vote at the meeting {as provided in subsection 1 of section 10-32-45};
 - p. Indemnification of certain persons is required {as provided in section 10-32-99};
 - q. The board of governors may authorize, and the limited liability company may make, distributions not prohibited, limited, or restricted by an agreement {as provided in subsection 1 of section 10-32-64}; and
 - r. Members have no right to interim distributions except as provided through the operating agreement or an act of the board of governors {as provided in section 10-32-61}.
4. The following provisions relating to the management of the business or the regulation of the affairs of a limited liability company may be included either in the articles of organization, a member central agreement under section 10-32-50, or, except for naming persons to serve as the first board of governors, fixing a greater than majority governor or member vote, establishing the rights and priorities for

distributions and the rights to share in profits and losses, or giving or prescribing the manner of giving voting rights to persons other than members otherwise than pursuant to the articles of organization, or eliminating or limiting a governor's personal liability, in the operating agreement:

- a. The persons to serve as the first board of governors may be named in the articles of organization ~~{as provided in subsection 1 of section 10-32-69}~~;
- b. A manner for increasing or decreasing the number of governors may be provided ~~{as provided in section 10-32-70}~~;
- c. Additional qualifications for governors may be imposed ~~{as provided in section 10-32-71}~~;
- d. Governors may be classified ~~{as provided in section 10-32-75}~~;
- e. The ~~day or~~ date, time, and place of board of governors meetings may be fixed ~~{as provided in subsection 1 of section 10-32-80}~~;
- f. Absent governors may be permitted to give written consent or opposition to a proposal ~~{as provided in section 10-32-81}~~;
- g. A larger than majority vote may be required for board of governor action ~~{as provided in section 10-32-83}~~;
- h. Authority to sign and deliver certain documents may be delegated to a manager or agent of the limited liability company other than the president ~~{as provided in section 10-32-89}~~;
- i. Additional managers may be designated ~~{as provided in section 10-32-90}~~ 10-32-88;
- j. Additional powers, rights, duties, and responsibilities may be given to managers ~~{as provided in section 10-32-94}~~ 10-32-89;
- k. A method for filling vacant offices may be specified ~~{as provided in subsection 3 of section 10-32-94}~~;
- l. The ~~day or~~ date, time, and place of regular member meetings may be fixed ~~{as provided in subsection 3 of section 10-32-38}~~;
- m. Certain persons may be authorized to call special meetings of members ~~{as provided in subsection 1 of section 10-32-39}~~;
- n. Notices of member meetings may be required to contain certain information ~~{as provided in subsection 3 of section 10-32-40}~~;
- o. A larger than majority vote may be required for member action ~~{as provided in section 10-32-42}~~;
- p. Voting rights may be granted in or pursuant to the articles of organization to persons who are not members ~~{as provided in subsection 3 of section 10-32-45}~~;

- q. Limited liability company actions giving rise to dissenter rights may be designated ~~{as provided in subdivision d of subsection 1 of section 10-32-55}; and~~
 - r. A governor's personal liability to the limited liability company or its members for monetary damages for breach of fiduciary duty as a governor may be eliminated or limited in the articles ~~{as provided in subsection 4 of section 10-32-86}~~.
5. The articles of organization may contain other provisions not inconsistent with law relating to the management of the business or the regulation of the affairs of the limited liability company.
 6. It is not necessary to set forth in the articles of organization any of the limited liability company powers granted by this chapter.

SECTION 102. AMENDMENT. Section 10-32-10 of the North Dakota Century Code is amended and reenacted as follows:

10-32-10. Limited liability company name.

1. The limited liability company name:
 - a. Must be in the English language or in any other language expressed in English letters or characters;
 - b. Must contain the words "limited liability company", or must contain the abbreviation "L.L.C." or the abbreviation "LLC", either of which abbreviation may be used interchangeably for all purposes authorized by this chapter including real estate matters, contracts, and filings with the secretary of state;
 - c. May not contain a word or phrase that indicates or implies that it may not be organized under this chapter;
 - d. May not contain the word "corporation" or "incorporated" and may not contain the abbreviation of either or both of these words;
 - e. May not contain a word or phrase that indicates or implies that it is organized for a purpose other than a legal business purpose for which a limited liability company may be organized under this chapter; and
 - e. ~~May not be the same as, or deceptively similar to, the name of a domestic or foreign limited liability company, corporation, or limited partnership, whether profit or nonprofit, authorized to do business in this state, or a name the right to which is, at the time of organization, reserved in the manner provided in section 10-32-11, or is a fictitious name registered with the office of the secretary of state in the manner provided in chapter 45-11 or is a trade name registered with the office of the secretary of state in the manner provided in chapter 47-25 unless there is filed with the articles of organization one of the following:~~
 - (4) ~~The written consent of the domestic or foreign limited liability company, corporation, or limited partnership authorized to~~

- ~~do business in this state having a deceptively similar name or the holder of a reserved name or registered trade name to use the deceptively similar name; or~~
- (2) ~~A certified copy of a final judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.~~
- f. May not be the same as, or deceptively similar to:
- (1) The name whether foreign and authorized to do business in this state, or domestic, unless there is filed with the articles a document which complies with subsection 2 of this section, of:
- (a) Another limited liability company;
- (b) A corporation;
- (c) A limited partnership; or
- (d) A limited liability partnership; or
- (2) A name, the right of which is, at the time of organization, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
- (3) A fictitious name registered in the manner provided in chapter 45-11; or
- (4) A trade name registered in the manner provided in chapter 47-25.
2. The secretary of state shall determine whether a limited liability company name is deceptively similar to another name for purposes of this chapter.
3. If the secretary of state determines that a limited liability company name is deceptively similar to another name for purposes of this chapter, then the limited liability company name may not be used unless there is filed with the articles:
- a. The written consent of the holder of the rights to the name to which the proposed name has been determined to be deceptively similar; or
- b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
- This subsection does not affect the right of a domestic limited liability company existing on the effective date of this chapter, or a foreign limited liability company authorized to do business in this state on that date to continue the use of its name.
4. This section and section 10-32-11 do not:
- a. Abrogate or limit:

- (1) The law of unfair competition or unfair practices;
 - (2) Chapter 47-25;
 - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks; or
 - (4) Any other rights to the exclusive use of names or symbols.
- b. Derogate the common law or the principles of equity.
4. 5. A limited liability company that is merged with another limited liability company or domestic or foreign corporation, or that is organized by the reorganization of one or more limited liability companies or domestic or foreign corporations, or that acquires by sale, lease, or other disposition to or exchange with a limited liability company all or substantially all of the assets of another limited liability company or domestic or foreign corporation including its name, may have the same name as that used in this state by any of the other limited liability companies or domestic or foreign corporations, if the other limited liability company or domestic or foreign corporation ~~was~~:
- a. Was organized or incorporated under the laws of; ~~or is~~ this state;
 - b. Is authorized to transact business or conduct activities in; this state;
 - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
 - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
 - e. Holds a trade name registered in the manner provided in chapter 47-25.
5. 6. The use of a name by a limited liability company in violation of this section does not affect or vitiate its limited liability company existence; ~~but~~. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the limited liability company from doing business under a name assumed in violation of this section, although its articles of organization may have been filed with the secretary of state and a certificate of organization issued.
7. A limited liability company whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section 10-32-149 may reacquire the right to use that name by refiling articles of organization pursuant to section 10-32-20, amending pursuant to section 10-32-130.1, or reinstating pursuant to section 10-32-149, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 2. A limited liability company that cannot reacquire the use of its limited liability company name shall adopt a new limited liability company name which complies with the provisions of this section.

SECTION 103. AMENDMENT. Section 10-32-11 of the North Dakota Century Code is amended and reenacted as follows:

10-32-11. Reserved name.

1. The exclusive right to the use of a limited liability company name otherwise permitted by section 10-32-10 may be reserved by any person.
2. The reservation is made by filing with the secretary of state a request that the name be reserved together with the fees provided in section 10-32-150.
 - a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.
 - b. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a limited liability company name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee together with the fees provided in section 10-32-150.
4. The right to the exclusive use of a limited liability company name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the cancellation together with the fees provided in section 10-32-150.
5. The secretary of state may accept for filing a legible facsimile copy of the signed original of any request for reserved name.
6. The secretary of state may destroy all reserved name requests and index thereof one year after expiration.

SECTION 104. AMENDMENT. Section 10-32-12 of the North Dakota Century Code is amended and reenacted as follows:

10-32-12. Registered office and agent.

1. A limited liability company shall continuously maintain a registered office in this state. A registered office need not be the same as the principal place of business, or the principal executive office of the limited liability company.
2. A limited liability company shall ~~designate in its articles of organization~~ appoint and continuously maintain a registered agent. The registered agent may be an individual residing in this state, a domestic corporation or a domestic limited liability company, or a foreign corporation or foreign limited liability company authorized to transact business in this state. The registered agent must maintain a business office that is identical with the registered office. Proof of the registered agent's

consent to serve in such capacity must be filed with the secretary of state, together with the fees provided in section 10-32-150.

SECTION 105. AMENDMENT. Section 10-32-13 of the North Dakota Century Code is amended and reenacted as follows:

10-32-13. Change of registered office or agent.

1. A limited liability company may change its registered office, change its registered agent, or state a change in the name of its registered agent, by filing with the secretary of state, along with the fees provided in section 10-32-150, a statement containing:
 - a. The name of the limited liability company;
 - b. If the address of its registered office is to be changed, the new address of its registered office;
 - c. If its registered agent is to be designated or changed, the name of its new registered agent;
 - d. If the name of its registered agent is to be changed, the name of its registered agent as changed;
 - e. A statement that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and
 - f. A statement that the change of registered office or registered agent was authorized by resolution approved by the board of governors.
2. A registered agent of a limited liability company may resign by filing with the secretary of state a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the limited liability company at its principal executive office, or to a legal representative of the limited liability company. The appointment of the agent terminates thirty days after the notice is filed with the secretary of state.
3. If the business address or name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each limited liability company represented by that agent by filing with the secretary of state a statement for each limited liability company as required in subsection 1, except that it need be signed only by the registered agent, need not be responsive to subdivision e or f of subsection 1, and must state that a copy of the statement has been mailed to each of those limited liability companies or to the legal representative of each of those limited liability companies.

SECTION 106. AMENDMENT. Section 10-32-15 of the North Dakota Century Code is amended and reenacted as follows:

10-32-15. Procedure for amendment before contribution. Before any contribution is reflected in the required records of a limited liability company, the articles of organization may be amended pursuant to section 10-32-67 by the

organizers or by the board of governors. The articles of organization may also be amended by the board of governors to change or cancel a statement pursuant to subsection 6 of section 10-32-56 establishing or fixing the rights and preferences of a class or series of membership interests before any contribution pertaining to that class or series is reflected in the required records of the limited liability company by filing articles of amendment or a statement of cancellation, as appropriate, with the secretary of state.

SECTION 107. AMENDMENT. Section 10-32-16 of the North Dakota Century Code is amended and reenacted as follows:

10-32-16. Procedure for amendment after contribution.

1. ~~After~~ Except as otherwise provided in section 10-32-15, after any contribution has been reflected in the required records of a limited liability company, the articles of organization may be amended in the manner set forth in this section.
2. A resolution approved by the affirmative vote of a majority of the governors present, or proposed by a member or members owning five percent or more of the voting power of the members entitled to vote, that sets forth the proposed amendment must be submitted to a vote at the next regular or special meeting of the members of which notice has not yet been given but still can be timely given. Any number of amendments may be submitted to the members and voted upon at one meeting, but the same or substantially the same amendment proposed by a member or members need not be submitted to the members or be voted upon at more than one meeting during a fifteen-month period. The resolution may amend the articles of organization in their entirety to restate and supersede the original articles of organization and all amendments to them.
3. Written notice of the members' meeting setting forth the substance of the proposed amendment must be given to each member entitled to vote in the manner provided in section 10-32-40 for the giving of notice of meetings of members.
4. The proposed amendment is adopted:
 - a. When approved by the affirmative vote of the ~~owners of a majority of the voting power of the members present and entitled to vote~~ members required by section 10-32-42; or
 - b. If the articles of organization provide for a specified proportion equal to or larger than the majority necessary to transact a specified type of business at a meeting, or if it is proposed to amend the articles to provide for a specified proportion equal to or larger than the majority necessary to transact a specified type of business at a meeting, the affirmative vote necessary to add the provision to, or to amend an existing provision in, the articles of organization is the larger of:
 - (1) The specified proportion or number or, in the absence of a specific provision, the affirmative vote necessary to transact the type of business described in the proposed amendment at

a meeting immediately before the effectiveness of the proposed amendment; or

- (2) The specified proportion or number that would, upon effectiveness of the proposed amendment, be necessary to transact the specified type of business at a meeting.

SECTION 108. AMENDMENT. Section 10-32-17 of the North Dakota Century Code is amended and reenacted as follows:

10-32-17. Class or series voting on amendments. The owners of the outstanding membership interests of a class or series are entitled to vote as a class or series upon a proposed amendment, whether or not entitled to vote on the amendment by the provisions of the articles of organization, if the amendment would:

1. Effect an exchange, reclassification, or cancellation of all or part of the membership interests of the class or series;
2. Effect an exchange, or create a right of exchange, of all or any part of the membership interests of another class or series for the membership interests of the class or series;
3. Change the rights or preferences of the membership interests of the class or series;
4. Change the membership interests of the class or series into the same or a different number of membership interests of ~~the same or~~ another class or series;
5. Create a new class or series of membership interests having rights and preferences prior and superior to the membership interests of that class or series, or increase the rights and preferences or the number of membership interests, of a class or series having rights and preferences prior or superior to the membership interests of that class or series;
6. Divide the membership interests of the class into series and determine the designation of each series and the variations in the relative rights and preferences between the membership interests of each series or authorize the board of governors to do so;
7. Limit or deny any existing preemptive rights of the membership interests of the class or series; or
8. Cancel or otherwise affect distributions on the membership interests of the class or series.

SECTION 109. AMENDMENT. Section 10-32-19 of the North Dakota Century Code is amended and reenacted as follows:

10-32-19. Effect of amendment.

1. An amendment does not affect an existing cause of action in favor of or against the limited liability company, nor a pending suit to which the limited liability company is a party, nor the existing rights of persons other than members.

2. If the limited liability company name is changed by the amendment, a suit brought by or against the limited liability company under its former name does not abate for that reason.
3. When effective under section 10-32-21, an amendment restating the articles in their entirety supersedes the original articles and all amendments to the original articles.

SECTION 110. AMENDMENT. Section 10-32-22 of the North Dakota Century Code is amended and reenacted as follows:

10-32-22. Amendment of articles of organization in court-supervised reorganization.

1. Whenever a plan of reorganization of a limited liability company has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of the limited liability company, pursuant to the provisions of any applicable statute of the United States relating to reorganization ~~of~~ of limited liability companies, the articles may be amended, in the manner provided in this section, in as many respects as may be necessary to carry out the plan and to put it into effect, so long as the articles as amended contain only provisions which might be lawfully contained in original articles of organization at the time of making the amendment. In particular, and without limitation upon any general power of amendment, the articles may be amended ~~for such purpose so~~ as to:
 - a. Change the limited liability company name, period of duration, or organizational purposes of the limited liability company.
 - b. Repeal, alter, or amend the operating agreement of the limited liability company.
 - c. Change the preferences, limitations, relative rights in respect of all or any part of the membership interests of the limited liability company, and classify, reclassify, or cancel all or any part thereof.
 - d. Authorize the issuance of bonds, debentures, or other obligations of the limited liability company, whether convertible into membership interests of any class or bearing warrants or other evidence of optional rights to purchase or subscribe for membership interests of any class, and fix the terms and conditions thereof.
 - e. Constitute or reconstitute and classify or reclassify the board of governors and appoint governors and managers in place of or in addition to all or any of the governors or managers then in office.
2. Amendments to the articles pursuant to subsection 1 must be made in the following manner:
 - a. Articles of amendment approved by decree or order of the court must be executed and verified in duplicate by the person or persons designated or appointed by the court for that purpose and must set forth the name of the limited liability company, the amendments of the articles approved by the court, the date of the decree or order approving the articles of amendment, the title of the proceedings in

which the decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the limited liability company pursuant to the provisions of an applicable statute of the United States.

- b. An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to law, and that all fees have been paid as provided in section 10-32-150, then the articles of amendment must be recorded in the office of the secretary of state.
3. The articles of amendment become effective upon their acceptance by the secretary of state or at any other time within thirty days after their acceptance if the articles of amendment so provide.
4. The articles are deemed to be amended accordingly, without any action by the governors or members of the limited liability company and with the same effect as if the amendment had been adopted by the unanimous action of the governors and members.

SECTION 111. AMENDMENT. Section 10-32-23 of the North Dakota Century Code is amended and reenacted as follows:

10-32-23. Powers General powers.

1. A limited liability company has the powers set forth in this section, subject to any limitations provided in any other statute of this state or in its articles of organization.
2. A limited liability company has a limited duration of thirty years from the date the articles of organization are filed with the secretary of state, unless the articles of organization state a shorter or longer duration.
3. A limited liability company may sue and be sued, and complain, defend, and participate as a party or otherwise in any legal, administrative, or arbitration proceeding in its limited liability company name.
4. A limited liability company may purchase, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property, or any interest in property, wherever situated.
5. A limited liability company may sell, convey, mortgage, create a security interest in, encumber, assign, lease, exchange, transfer, or otherwise dispose of all or any part of its real or personal property, or any interest in this property, wherever situated.
6. A limited liability company may purchase, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, exchange, mortgage, lend, create a security interest in, or otherwise dispose of ~~and otherwise~~, use and deal in and with, securities or other interests in, or obligations of, a person or direct or indirect obligations of any domestic or foreign government or instrumentality ~~thereof~~.
7. A limited liability company may make contracts and incur liabilities, borrow money, and secure any of its obligations by mortgage of or

creation of a security interest in or other encumbrance or assignment of all or any of its property, franchises, and income.

8. A limited liability company may invest and reinvest its funds.
9. A limited liability company may take and hold real and personal property, whether or not of a kind sold or otherwise dealt in by the limited liability company, as security for the payment of money loaned, advanced, or invested.
10. A limited liability company may conduct its business, carry on its operations, have offices, and exercise the powers granted by this chapter anywhere in the universe.
11. Except as otherwise prohibited by law, a limited liability company may make donations, irrespective of limited liability company benefit, for:
 - a. The public welfare;
 - b. Social, community, charitable, religious, educational, scientific, civic, literary, and testing for public safety purposes and for similar or related purposes;
 - c. ~~For the~~ The purpose of fostering national or international amateur sports competition; and
 - d. The prevention of cruelty to children and animals.
12. A limited liability company may pay pensions, retirement allowances, and compensation for past services ~~to and for the benefit of,~~ and establish; ~~maintain, continue, and carry out, wholly or partially at the expense of the limited liability company,~~ employee or incentive benefit plans, trusts, and provisions ~~to or for the benefit of ; any or all of its and its related organizations' officers, managers, directors, governors, employees, and agents and, in the case of a related organization that is a limited liability company, members who provide services to the limited liability company, and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for~~ ~~and on behalf of~~ a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.
13. A limited liability company may participate in any capacity in the promotion, organization, ownership, management, and operation of any organization or in any transaction, undertaking, or arrangement that the participating limited liability company would have power to conduct by itself, whether or not the participation involves sharing or delegation of control ~~with or to others.~~
14. A limited liability company may provide for its benefit life insurance and other insurance with respect to the services of ~~any or all of its members,~~ managers, governors, employees, and agents, or on the life of a member for the purpose of acquiring at the death of the member any or all membership interests in the limited liability company owned by the member.

15. A limited liability company may have, alter at its pleasure, and use a limited liability company seal as provided in section 10-32-24.
16. A limited liability company may adopt, amend, and repeal an operating agreement relating to the management of the business or the regulation of the affairs of the limited liability company as provided in section 10-32-68.
17. A limited liability company may establish committees of the board of governors, elect or appoint persons to the committees, and define their duties as provided in section 10-32-85 and fix their compensation.
18. A limited liability company may elect or appoint managers, employees, and agents of the limited liability company and define their duties and fix their compensation.
19. A limited liability company may accept contributions under section 10-32-56 and may enter into contribution agreements under section 10-32-58 and contribution allowance agreements under section 10-32-59.
20. A limited liability company may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist persons as provided in section 10-32-97.
21. A limited liability company may make advances as provided in section 10-32-98.
22. A limited liability company shall indemnify those persons against certain expenses and liabilities only as provided in section 10-32-99.
23. A limited liability company may conduct all or part of its business under one or more trade names.
24. A limited liability company may acquire an ownership interest in another organization.
25. A limited liability company may have and exercise all other powers necessary or convenient to effect any or all of the business purposes for which the limited liability company is organized.

¹ **SECTION 112. AMENDMENT.** Section 10-32-28 of the North Dakota Century Code is amended and reenacted as follows:

10-32-28. Nature of a membership interest and statement of interest owned.

1. A membership interest is personal property. A member has no interest in specific limited liability company property. All property of the limited liability company is property of the limited liability company itself.

¹ Section 10-32-28 was also amended by section 2 of Senate Bill No. 2099, chapter 362.

2. At the request of any member, the limited liability company shall state in writing the particular membership interest owned by that member as of the moment the limited liability company makes the statement.
 - a. The statement must describe the member's right to vote, to share in profits and losses, and to share in distributions, restrictions on assignments of financial rights under subsection 3 of section 10-32-31 or governance rights under subsection 6 of section 10-32-32, then in effect, as well as any assignment of the member's rights then in effect other than a security interest.
 - b. The statement is not a certificated security, is not a negotiable instrument, and may not serve as a vehicle by which a transfer of any membership interest may be effected.
3. Notwithstanding any other provision of law, for the purpose of any law relating to security interests, a membership interest, governance rights, and financial rights are each a general intangible, as defined in section 41-09-06, and not a certificated security as defined in subdivision a of subsection 1 of section 41-08-02, an uncertificated security as defined in subdivision b of subsection 1 of section 41-08-02, chattel paper as defined in subdivision b of subsection 1 of section 41-09-05, an instrument as defined in subdivision i of subsection 1 of section 41-09-05, or an account as defined in section 41-09-06.

SECTION 113. AMENDMENT. Section 10-32-31 of the North Dakota Century Code is amended and reenacted as follows:

10-32-31. Assignment of financial rights.

1. Except as provided in subsection 3, a member's financial rights are transferable in whole or in part.
2. An assignment of a member's financial rights entitles the assignee to receive, to the extent assigned, only the share of profits and losses and the distributions to which the assignor would otherwise be entitled.
 - a. An assignment of a member's financial rights does not dissolve the limited liability company and does not entitle or empower the assignee to become a member, to exercise any governance rights, to receive any notices from the limited liability company, or to cause dissolution.
 - b. The assignment may not allow the assignee to control the member's exercise of governance rights.
3. A restriction on the assignment of financial rights may be imposed in the articles, in the operating agreement, by a resolution adopted by the members, or by an agreement among or other written action by members or among them and the limited liability company. A restriction is not binding with respect to financial rights reflected in the required records before the adoption of the restriction, unless the owners of those financial rights are parties to the agreement or voted in favor of the restriction.

4. Subject to subsection 5, a written restriction on the assignment of financial rights that is not manifestly unreasonable under the circumstances and is noted conspicuously in the required records may be enforced against the owner of the restricted financial rights or a successor or transferee of the owner, including a pledgee or a legal representative. Unless noted conspicuously in the required records, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction.
5. With regard to restrictions on the assignment of financial rights, a would-be assignee of financial rights is entitled to rely on a statement of membership interest issued by the limited liability company under section 10-32-28. A restriction on the assignment of financial rights, which is otherwise valid and in effect at the time of the issuance of a statement of membership interest but which is not reflected in that statement, is ineffective against an assignee who takes an assignment in reliance on the statement.
6. Notwithstanding any provision of law, articles of organization, member-control agreement, operating agreement, other agreement, resolution, or action to the contrary, a security interest in a member's financial rights may be foreclosed and otherwise enforced, and a secured party may assign a member's financial rights in accordance with title 41 without the consent or approval of a member whose financial rights are subject to the security interest.

SECTION 114. AMENDMENT. Section 10-32-32 of the North Dakota Century Code is amended and reenacted as follows:

10-32-32. Assignment of a complete membership interest and of governance rights coupled with an assignment of financial rights.

1. A member's governance rights are assignable, in whole or in part, only as provided in this section.
2. Subject to subsection 6, a member may, without the consent of any other member, assign governance rights, in whole or in part, to another person already a member at the time of the assignment. ~~Any~~
 - a. Except as otherwise provided in the articles of organization, any other assignment of any governance rights is effective only if all the members, other than the member seeking to make the assignment, approve the assignment by unanimous written consent; ~~unless the articles of organization provide for written consent by fewer than all members.~~
 - b. Subject to subsection 6, a member may grant a security interest in a complete membership interest or governance rights without obtaining the consent required by this subsection.
 - (1) However, a secured party may not take or assign ownership of governance rights without first obtaining the consent required by this subsection.
 - (2) If a secured party has a security interest in both a member's financial rights and governance rights, including a security

interest in a complete membership interest, this subsection's requirement that the secured party obtain consent applies only to taking or assigning ownership of the governance rights and does not apply to taking or assigning ownership of the financial rights.

3. When an assignment of governance rights is effective under subsection 2:
 - a. If the assignment is not a security interest, the assignee becomes a member, if not already a member; and
 - b. If the assignor does not retain any governance rights, the assignor ceases to be a member, and the written consent required under subsection 2, also constitutes the dissolution avoidance consent necessary to avoid dissolution that would otherwise ensue under subdivision e of subsection 1 of section 10-32-109 on account of the assignor ceasing to be a member if the consent required to avoid dissolution is not greater than the consent required under subsection 2.
4. When an assignment other than a security interest is effective under subsection 2, unless the written consent under subsection 2 otherwise provides:
 - a. The assignee is liable in proportion to the interest assigned for the obligations of the assignor under section 10-32-56, including liability for unperformed promises that have been reflected as contributions in the required records, and section 10-32-65 existing at the time of transfer, except to the extent that, at the time the assignee became a member, the liability was unknown to the assignee, and could not be ascertained from the required records; and
 - b. The assignor is not released from liability to the limited liability company for obligations of the assignor existing at the time of transfer under sections 10-32-56 and 10-32-65.
5. If any purported or attempted assignment of governance rights is ineffective for failure to obtain the consent required in subsection 2:
 - a. The purported or attempted assignment is ineffective in its entirety; and
 - b. Any assignment of financial rights that accompanied the purported or attempted assignment of governance rights is void.
6. Restrictions on the transfer of governance rights may be imposed following the same procedures and under the same conditions as stated in subsections 3 and 4 of section 10-32-31 for restricting the transfer of financial rights.
7. Notwithstanding any provision of law, articles of organization, member-control agreement, operating agreement, other agreement, resolution, or action to the contrary, a security interest in a member's full membership interest or governance rights may be foreclosed and otherwise enforced, and a secured party may assign a member's complete membership interest or governance rights in accordance with

title 41, all without the consent or approval of the member whose full membership interest or governance rights are the subject of the security interest.

SECTION 115. AMENDMENT. Section 10-32-34 of the North Dakota Century Code is amended and reenacted as follows:

10-32-34. Rights of judgment creditor. On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge a member's or an assignee's financial rights with payment of the unsatisfied amount of the judgment with interest.

1. To the extent so charged, the judgment creditor has only the rights of an assignee of a member's financial rights under section 10-32-31.
2. This chapter does not deprive any member or assignee of financial rights of the benefit of any exemption laws applicable to the membership interest.
3. This section is the sole and exclusive remedy of a judgment creditor with respect to the judgment debtor's membership interest.

SECTION 116. AMENDMENT. Section 10-32-37 of the North Dakota Century Code is amended and reenacted as follows:

10-32-37. Preemptive rights.

1. To the extent allowed by section 9 of article XII of the Constitution of North Dakota, a member of a limited liability company has the preemptive rights provided in this section, unless denied or limited in the articles of organization or by the board of governors pursuant to subdivision b of subsection 5 of section 10-32-56.
2. A preemptive right is the right of a member to make contributions of a certain amount or to make a contribution allowance agreement specifying future contributions of a certain amount before the limited liability company may accept new contributions from other persons or to make contribution allowance agreements with other persons.
3. A member has a preemptive right whenever the limited liability company proposes to accept contributions from other persons, or to make contribution allowance agreements with other persons, pertaining to membership interests of the same series or class as the series or class owned by the member.
4. ~~No~~ Unless otherwise provided in the articles of organization, no preemptive rights pursuant to this section arise as to contributions to be accepted from others or as to contribution allowance agreements to be made with others when the contribution is:
 - a. To be made in a form other than money;
 - b. To be made or reflected pursuant to a plan of merger;
 - c. To be made or reflected pursuant to an employee or incentive benefit plan approved at a meeting by the affirmative vote of the

- owners of a majority of the voting power of all membership interests entitled to vote;
- d. To be made pursuant to a previously made contribution allowance agreement; or
 - e. To be made or reflected pursuant to a plan of reorganization approved by a court of competent jurisdiction pursuant to a statute of this state or of the United States.
5. The extent to which each member may make a new contribution, or obtain the right to make a new contribution under a contribution allowance agreement, by exercise of a preemptive right as to any class or series is the ratio that the value of that member's contributions, as reflected in the required records as pertaining to that class or series before the contribution, bears to the total value of all members' contributions reflected in the required records as pertaining to that class or series before the new contribution.
 6. A member may waive a preemptive right in writing. The waiver is binding upon the member whether or not consideration has been given for the waiver. Unless otherwise provided in the waiver, a waiver of preemptive rights is effective only for the proposed contribution or contribution allowance agreement described in the waiver.
 7. When proposing to accept new contributions, or to make contribution allowance agreements, with respect to which members have preemptive rights under this section, the board of governors shall cause notice to be given to each member entitled to preemptive rights. The notice must be given at least ten days before the date by which the member must exercise a preemptive right and must contain:
 - a. The extent of the member's preemptive right, being:
 - (1) In the case of a preemptive right to make a contribution, the amount of the contribution to be made; and
 - (2) In the case of a preemptive right to make a contribution allowance agreement, the amount of the contribution to be allowed under that contribution allowance agreement;
 - b. The method used to determine the extent of the member's preemptive right;
 - c. The terms and conditions upon which the member may make a contribution or make a contribution allowance agreement; and
 - d. The time within which and the method by which the member must exercise the right.
 8. If a member does not exercise preemptive rights to make a contribution or to make a contribution allowance agreement, then for a period not exceeding one year after the date fixed by the board of governors for the exercise of those preemptive rights and to the extent of the preemptive rights not exercised, the board of governors may accept contributions or

make contribution allowance agreements on terms no less favorable to the limited liability company than those offered to the member.

9. ~~No~~ If the members of a limited liability company are entitled to cumulative voting in the election of governors, no amendment to the articles of organization that has the effect of denying, limiting, or modifying the preemptive rights provided in this section may be adopted if the votes of a proportion of the voting power sufficient to elect a governor at an election of the entire board of governors under cumulative voting are cast against the amendment.

SECTION 117. AMENDMENT. Section 10-32-38 of the North Dakota Century Code is amended and reenacted as follows:

10-32-38. Regular meetings of members.

1. Regular meetings of members may be held on an annual or other less frequent periodic basis, but need not be held unless required by the articles of organization or operating agreement or by subsection 2.
2. If a regular meeting of members has not been held ~~during~~ within the immediately preceding ~~earlier of six months after the fiscal yearend of the corporation or fifteen months; a~~ after its last meeting:
 - a. A member or members owning five percent or more of the voting power of all members entitled to vote may demand a regular meeting of members by written notice of demand given to the president or the secretary of the limited liability company.
 - b. Within thirty days after receipt of the demand by one of those managers, the board of governors shall cause a regular meeting of members to be called and held on notice no later than ninety days after receipt of the demand.
 - c. If the board of governors fails to cause a regular meeting to be called and held as required by this subsection, the member or members making the demand may call the regular meeting by giving notice as required by section 10-32-40.
 - d. All necessary expenses of the notice and the meeting must be paid by the limited liability company.
3. A regular meeting, if any, must be held on the ~~day of~~ date and at the time and place fixed by, or in a manner authorized by, the articles or operating agreement, except that a meeting called by or at the demand of a member pursuant to subsection 2 must be held in the county where the principal executive office of the limited liability company is located.
4. At each regular meeting of members ~~there:~~
 - a. There must be an election of qualified successors for governors who serve for an indefinite term or whose terms have expired or are due to expire within six months after the date of the meeting.
 - b. No other particular business is required to be transacted at a regular meeting.

- c. Any business appropriate for action by the members may be transacted at a regular meeting.

SECTION 118. AMENDMENT. Section 10-32-39 of the North Dakota Century Code is amended and reenacted as follows:

10-32-39. Special meetings of members.

1. Special meetings of the members may be called for any purpose or purposes at any time, by:
 - a. The president;
 - b. Two or more governors;
 - c. A person authorized in the articles or operating agreement to call special meetings; or
 - d. A member or members owning ten percent or more of the voting power of all membership interests entitled to vote.
2. A member or members owning ten percent or more of the voting power of all membership interests entitled to vote, may demand a special meeting of members by written notice of demand given to the president or secretary of the limited liability company and containing the purposes of the meeting.
 - a. Within thirty days after receipt of the demand by one of those managers, the board of governors shall cause a special meeting of members to be called and held on notice no later than ninety days after receipt of the demand, all at the expense of the limited liability company.
 - b. If the board of governors fails to cause a special meeting to be called and held as required by this subsection, the member or members making the demand may call the meeting by giving notice as required by section 10-32-40.
 - c. All necessary expenses of the notice and the meeting must be paid by the limited liability company.
3. Special meetings must be held on the date and at the time and place fixed by the president, the board of governors, or a person authorized by the articles or operating agreement to call a meeting, except that a special meeting called by or at the demand of a member or members pursuant to subsection 2 must be held in the county where the principal executive office is located.
4. The business transacted at a special meeting is limited to the purposes stated in the notice of the meeting. Any business transacted at a special meeting that is not included in those stated purposes is voidable by or on behalf of the limited liability company, unless all of the members have waived notice of the meeting in accordance with subsection 4 of section 10-32-40.

SECTION 119. Section 10-32-39.1 of the North Dakota Century Code is created and enacted as follows:

10-32-39.1. Court-ordered meeting of members.

1. The district court of the county where the principal executive office of a limited liability company is located may order a meeting to be held:
 - a. On application of a member or members holding five percent or more of the voting power of all membership interests entitled to vote, if a meeting was not held within the earlier of six months after the fiscal yearend of the limited liability company or fifteen months after its last meeting; or
 - b. On application of a voting member who signed a demand for a special meeting valid under section 10-32-39 or a person entitled to call a special meeting if:
 - (1) Notice of the special meeting was not given within thirty days after the date the demand was delivered to a manager; or
 - (2) The special meeting was not held in accordance with the notice.
2. The court may fix the time and place of the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting, or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purposes of the meeting.
3. If the court orders a meeting, it may also order the limited liability company to pay the costs of the member, including reasonable attorneys' fees incurred to obtain the order.

SECTION 120. AMENDMENT. Section 10-32-40 of the North Dakota Century Code is amended and reenacted as follows:

10-32-40. Notice.

1. Except as otherwise provided in this chapter, notice of all meetings of members must be given to every owner of membership interests entitled to vote, ~~except where the meeting is an adjourned meeting and the date, time, and place of the meeting were announced at the time of adjournment.~~ unless:
 - a. The meeting is an adjourned meeting to be held not more than one hundred twenty days after the date fixed for the original meeting and the date, time, and place of the meeting were announced at the time of the original meeting or any adjournment of the original meeting; or
 - b. The following have been mailed by first-class mail to a member at the address in the limited liability company records and returned nondeliverable:

- (1) Two consecutive annual meeting notices and notices of any special meetings held during the period between the two annual meetings; or
 - (2) All payments of distribution sent during a twelve-month period, provided there were at least two sent during the twelve-month period.
- c. An action or meeting that is taken or held without notice under subdivision b has the same force and effect as if notice was given. If the member delivers a written notice of the member's current address to the limited liability company, the notice requirement is reinstated.
2. If notice of an adjourned meeting is required under subdivision a of subsection 1, then the date for determination of membership interests entitled to notice of and entitled to vote at the adjourned meeting must comply with subsection 1 of section 1-019.1-73.2, except, if the date of the meeting is set by court order, the court may provide that the original date of determination will continue in effect or may fix a new date.
3. The notice:
 - a. In all instances where a specific minimum notice period has not otherwise been fixed by law, the notice must be given at least ten days before the date of the meeting, or a shorter time provided in the articles of organization or operating agreement, and not more than fifty days before the date of the meeting;:
 3. b. ~~The notice must contain the date, time, and place of the meeting, and any other information required by this chapter. In the case of a special meeting, the notice must contain a statement of the purposes of the meeting. The notice may also contain any other information required by the articles of organization or operating agreement or considered necessary or desirable by the board of governors or by any other person or persons calling the meeting;:~~
 - c. Must contain the information with respect to dissenter's rights required by subsection 2 of section 10-32-55, if applicable;
 - d. Must inform members if proxies are permitted at the meeting and, if so, state the procedure for appointing proxies;
 - e. Must contain a statement of the purpose of the meeting, in the case of a special meeting;
 - f. Must contain any other information:
 - (1) Required by the articles of organization, operating agreement, or this chapter;
 - (2) Considered necessary or desirable by the board of governors; and
 - g. May contain any other information considered necessary or desirable by the person or persons calling the meeting.

4. A member may waive notice of a meeting of members.
 - a. A waiver of notice by a member entitled to notice is effective ~~whether~~:
 - (1) Whether given before, at, or after the meeting; ~~and whether~~
 - (2) Whether given in writing, or by attendance.
 - b. Attendance by a member at a meeting is a waiver of notice of that meeting, except where the member ~~objects~~:
 - (1) Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened; ~~or objects~~
 - (2) Objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

SECTION 121. Section 10-32-40.1 of the North Dakota Century Code is created and enacted as follows:

10-32-40.1. Voting rights.

1. The board of governors may fix a date not more than fifty days, or a shorter time period provided in the articles of organization or operating agreement, before the date of a meeting of members as the date for the determination of the owners of membership interests entitled to notice of and entitled to vote at the meeting. When a date is so fixed, only members on that date are entitled to notice of and permitted to vote at that meeting of members.
2. A determination of the owners of membership interests entitled to notice and to vote at a meeting of members is effective for an adjournment of the meeting unless the board of governors fixes a new date for determining the right to notice and to vote, which it must do if the meeting is adjourned to a date more than fifty days after the record date for determining members entitled to notice of the original meeting.
3. If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting:
 - a. It must provide the original record date for notice and voting continues in effect; or
 - b. It may fix a new record date for notice and voting.
4. A resolution approved by the affirmative vote of a majority of the governors present may establish a procedure whereby a member may certify in writing to the limited liability company that all or a portion of the membership interest registered in the name of the member are held for the account of one or more beneficial owners. Upon receipt by the limited liability company of the writing, the persons specified as beneficial owners, rather than the actual member, are deemed the members for the purposes specified in the writing.

5. Unless otherwise provided in the articles or by the board of governors under subsections 5 and 6 of section 10-32-56, members have voting power in proportion to the value of the contributions of the members as reflected in the required records.
6. The articles of organization may give or prescribe the manner of giving a creditor, securityholder, or other person a right to vote under this section, but no prescription under this subsection may have the effect of transferring from an assignor of financial rights to the assignee the assignor's voting rights.
7. Membership interests owned by two or more members may be voted by any one of them unless the limited liability company receives written notice from any one of them denying the authority of that person to vote those membership interests.
8. Except as provided in subsection 7, an owner of a membership interest entitled to vote may vote any portion of the membership interest in any way the member chooses. If a member votes without designating the proportion voted in a particular way, the member is considered to have voted all of the membership interest in that way.

SECTION 122. Section 10-32-40.2 of the North Dakota Century Code is created and enacted as follows:

10-32-40.2. Voting list.

1. After fixing a record date for notice of and voting at a meeting, a limited liability company shall prepare an alphabetical list of the names of its members who are entitled to notice and to vote. The list must show the address and the voting power of each member.
2. The list of members must be available for inspection by a member with voting rights for the purpose of communication with other members concerning the meeting, beginning two business days after the meeting notice is given and continuing through the meeting, at the principal executive office of the limited liability company or at a reasonable place identified in the meeting notice in the city where the meeting will be held.
 - a. The list also must be available at the meeting.
 - b. A member, a member's agent, or the attorney of the member or member's agent is entitled on written demand to inspect and to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection and at any time during the meeting or an adjournment.
3. If the limited liability company refuses to allow a member with voting rights, the member's agent, or the attorney of the member or member's agent to inspect the list of members before or at the meeting, the district court of the county where the principal executive office of the limited liability company is located, on application of the member, may:
 - a. Order the inspection or copying at the limited liability company's expense;

- b. Postpone the meeting until the inspection or copying is complete; or
 - c. Order the limited liability company to pay the member's costs, including reasonable attorneys' fees, incurred to obtain the order.
 4. Unless a written demand to inspect and copy a membership list has been made under subsection 2 before the membership meeting and a limited liability company improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.
 5. A member, agent, or attorney who gains access to a membership list under this section may not use or give to another for use the membership list for any purpose other than a proper purpose. Upon application of the limited liability company, the district court may issue a protective order or order other relief necessary to enforce this subsection.

SECTION 123. AMENDMENT. Section 10-32-42 of the North Dakota Century Code is amended and reenacted as follows:

10-32-42. Act of members. Unless this chapter or the articles of organization require a greater vote or voting by class or series:

1. The members shall take action by the affirmative vote of the owners of the greater of a majority of the voting power of the membership interests present and entitled to vote on that item of business except where this chapter or the articles of organization require a larger proportion or a majority of the voting power of the membership interests with voting rights that would constitute the minimum voting power needed for a quorum for the transaction of business at a meeting. If the articles require a larger proportion than is required by this chapter for a particular action, the articles control.
2. In any case where a class or series of membership interests is entitled by this chapter, the articles of organization, the operating agreement, or the terms of the membership interests to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the owners of the same proportion of the membership interests as is required pursuant to subsection 1.
3. Unless otherwise provided in the article or operating agreement, members may take action at a meeting by voice or ballot, action without a meeting pursuant to section 10-32-43, written ballot pursuant to section 10-32-43.1, or by electronic communication pursuant to section 10-32-43.2.

SECTION 124. AMENDMENT. Section 10-32-43 of the North Dakota Century Code is amended and reenacted as follows:

10-32-43. Action without a meeting.

1. An action required or permitted to be taken at a meeting of the members may be taken without a meeting by written action signed by all of the members entitled to vote on that action. If the articles so provide, any action may be taken by written action signed by the members who own voting power equal to the voting power that would be required to

take the same action at a meeting of the members at which all members were present.

2. The written action is effective when signed by the required members, unless a different effective time is provided in the written action.
3. When written action is permitted to be taken by less than all members, all members must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A member who does not sign or consent to the written action has no liability for the action or actions taken by the written action.
4. When this chapter requires or permits a certificate concerning an action to be filed with the secretary of state, the managers signing the certificate must indicate that the action was taken under this section.

SECTION 125. Section 10-32-43.1 of the North Dakota Century Code is created and enacted as follows:

10-32-43.1. Action by written ballot.

1. Except as provided in subsection 5, and unless prohibited or limited by the articles or operating agreement, an action that may be taken at a regular or special meeting of members may be taken without a meeting if the limited liability company mails or delivers a written ballot to every member entitled to vote on the matter.
2. A written ballot must set forth each proposed action and provide an opportunity to vote for or against each proposed action.
3. Approval by written ballot under this section is valid only if:
 - a. The number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action; and
 - b. The number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.
4. Solicitations for votes by written ballot must:
 - a. Indicate the number of responses needed to meet the quorum requirements;
 - b. State the percentage of approvals necessary to approve each matter other than election of governors; and
 - c. Specify the time by which a ballot must be received by the limited liability company in order to be counted.
5. Except as otherwise provided in the articles or operating agreement, a written ballot may not be revoked.

SECTION 126. Section 10-32-43.2 of the North Dakota Century Code is created and enacted as follows:

10-32-43.2. Electronic communications.

1. A conference among members by any means of communication through which the participants may simultaneously hear each other during the conference constitutes a regular or special meeting of members if the same notice is given of the conference as would be required for a meeting and the membership interests held by the members participating in the conference would be sufficient to constitute a quorum at a meeting. Participation in a conference by this means constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-32-48 are met.
2. A member may participate in a regular or special meeting of members not described in subsection 1 by any means of communication through which the member, other participants, and all participants physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-32-48 are met.
3. Waiver of notice of a meeting by means of communication described in subsections 1 and 2 may be given in the manner provided in subsection 4 of section 10-32-40. Participation in a meeting by means of communication described in subsections 1 and 2 is a waiver of notice of that meeting, except where the member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened or objects before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

SECTION 127. AMENDMENT. Section 10-32-44 of the North Dakota Century Code is amended and reenacted as follows:

10-32-44. Quorum. The

1. A quorum for a meeting of members is the owners of a majority of the voting power of the membership interests entitled to vote at a the meeting are a quorum for the transaction of business, unless a larger or smaller proportion is provided in the articles or operating agreement. In no event may a quorum consist of less than one-third of the membership interests entitled to vote at the meeting. If a quorum is present when a duly called or held meeting is convened, the members present may continue to transact business until adjournment, even though the withdrawal of members originally present leaves less than the proportion otherwise required for a quorum.
2. Except as provided in subdivision b, a quorum is necessary for the transaction of business at a meeting of members.
 - a. If a quorum is not present, a meeting may be adjourned from time to time for that reason.
 - b. If a quorum has been present at a meeting and members have withdrawn from the meeting so that less than a quorum remains, the members still present may continue to transact business until adjournment.

SECTION 128. AMENDMENT. Section 10-32-47 of the North Dakota Century Code is amended and reenacted as follows:

10-32-47. Voting by organizations and legal representatives.

1. Membership interests of a limited liability company reflected in the required records as being owned by another domestic or foreign organization may be voted by the president or another legal representative of that organization.
2. Except as provided in subsection 3, membership interests of a limited liability company reflected in the required records as being owned by a subsidiary are not entitled to ~~vote~~ be voted on any matter.
3. Membership interests of a limited liability company in the name of, or under the control of, the limited liability company or a subsidiary in a fiduciary capacity are not entitled to vote on any matter, except to the extent that the settlor or beneficiary possesses and exercises a right to ~~vote~~ be voted or gives the limited liability company or, with respect to membership interests in the name of or under the control of a subsidiary, binding instructions on how to vote the membership interests.
4. Subject to section 10-32-35, membership interests under the control of a person in a capacity as a personal representative, administrator, executor, guardian, conservator, or the like may be voted by the person, either in person or by proxy, without reflecting in the required records those membership interests in the name of the person.
5. Subject to section 10-32-35, membership interests reflected in the required records in the name of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver either in person or by proxy. Membership interests under the control of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver without reflecting in the required records the name of the trustee or receiver, if authority to do so is contained in an appropriate order of the court by which the trustee or receiver was appointed.
6. Membership interests reflected in the required records in the name of an organization not described in subsections 1 through 5 may be voted either in person or by proxy by the legal representative of that organization.
7. The grant of a security interest in a membership interest does not entitle the holders of the security interest to vote except as provided in section 10-32-32.

SECTION 129. AMENDMENT. Section 10-32-48 of the North Dakota Century Code is amended and reenacted as follows:

10-32-48. Proxies.

1. A member may cast or authorize the casting of a vote by filing a written appointment of a proxy with a manager of the limited liability company at or before the meeting at which the appointment is to be effective.

- a. A written appointment of a proxy may be signed by the member or authorized by the member by transmission of a telegram, cablegram, or other means of electronic transmission: ~~The telegram, cablegram, or other means of electronic transmission must set forth or be submitted with information from which it can be determined,~~ provided the limited liability company has no reason to believe that the telegram, cablegram, or other electronic transmission was not authorized by the member.
 - b. Any reproduction of the writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original transmission could be used, if the copy, facsimile telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission.
 - c. An appointment of a proxy for membership interests owned jointly by two or more members is valid if signed or otherwise authorized by any one of them, unless the limited liability company receives from any one of those members written notice either denying the authority of that person to appoint a proxy or appointing a different proxy.
2. The appointment of a proxy is valid for eleven months, unless a longer period is expressly provided in the appointment. No appointment is irrevocable and any agreement purporting to grant an irrevocable proxy is void. A member who revokes a proxy is not liable in any way for damages, restitution, or other claim.
3. An appointment may be ~~terminated~~ revoked at will. ~~Termination may be made by filing written notice of the termination of the appointment with a manager of the limited liability company, or by filing a new written appointment of a proxy with a manager of the limited liability company.~~ Termination Appointment of a proxy is revoked by the person appointing the proxy by attending a meeting and voting in person or signing and delivering to the manager or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a later appointment. Revocation in either manner revokes all prior proxy appointments and is effective when filed with a manager of the limited liability company.
4. The death or incapacity of a person appointing a proxy does not revoke or affect the right of the limited liability company to accept the authority of the proxy, unless written notice of the death or incapacity is received by a manager of the limited liability company authorized to tabulate votes before the proxy exercises the authority under that appointment.
5. Unless the appointment specifically provides otherwise, if two or more persons are appointed as proxies for a member:
 - a. Any one of them may vote the membership interests on each item of business in accordance with specific instructions contained in the appointment; and
 - b. If no specific instructions are contained in the appointment with respect to voting the membership interests on a particular item of

business, the membership interests must be voted as a majority of the proxies determine. If the proxies are equally divided, the membership interests must not be voted.

6. ~~Unless the appointment of a proxy contains a~~ Subject to section 10-32-48.1 and an express restriction, limitation, or specific reservation of authority of the proxy appearing in the appointment, the limited liability company may accept a vote or action taken by a person named in the appointment by the proxy as the action of the member. The vote of a proxy is final, binding, and not subject to challenge, but the proxy is liable to the member for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment.
7. If a proxy is given authority by a member to vote on less than all items of business considered at a meeting of members, the member is considered to be present and entitled to vote by the proxy for purposes of subsection 1 of section 10-32-42 only with respect to those items of business for which the proxy has authority to vote. A proxy who is given authority by a member who abstains with respect to an item of business is considered to have authority to vote on the item of business for purposes of this subsection.
8. A member may not grant any proxy to any person who is an assignee of any member's financial rights and who is not also a member.

SECTION 130. Section 10-32-48.1 of the North Dakota Century Code is created and enacted as follows:

10-32-48.1. Acceptance of member act by the limited liability company.

1. If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the record name of a member, the limited liability company, if acting in good faith, may accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member.
2. Unless the articles or operating agreement provide otherwise, if the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name of a member, the limited liability company, if acting in good faith, may accept the vote, consent waiver, or proxy appointment and give it effect as the act of the member if:
 - a. The member is an organization and the name signed purports to be that of an officer, manager, or agent of the organization;
 - b. The name signed purports to be that of an administrator, guardian, or conservator representing the member and, if the limited liability company requests, evidence of fiduciary status acceptable to the limited liability company has been presented with respect to the vote, consent, waiver, or proxy appointment;
 - c. The name signed purports to be that of a receiver or trustee in bankruptcy of the member, and, if the limited liability company requests, evidence of this status acceptable to the limited liability company has been presented with respect to the vote, consent, waiver, or proxy appointment;

- d. The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the member and if the limited liability company requests, evidence acceptable to the limited liability company of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment; or
 - e. Two or more persons hold the membership interests as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coholders and the person signing appears to be acting on behalf of all the coholders.
- 3. The limited liability company may reject a vote, consent, waiver, or proxy appointment if the manager or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.
- 4. The limited liability company or its manager or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section is not liable in damages to the member for the consequences of the acceptance or rejection.
- 5. Limited liability company action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

SECTION 131. AMENDMENT. Subsection 1 of section 10-32-50 of the North Dakota Century Code is amended and reenacted as follows:

- 1. A written agreement among persons who are then members or who have signed contribution agreements, relating to the control of any phase of the business and affairs of the limited liability company, its liquidation, dissolution, and termination, or the relations among members or persons who have signed contribution agreements is valid as provided in subsection 2.
 - a. When this chapter provides that a particular result may or must be obtained through a provision in the articles of organization, other than a provision required by subsection 1 of section 10-32-07 to be contained in the articles, or in the operating agreement, the same result can be accomplished through a member-control agreement valid under this section or through a procedure established by a member-control agreement valid under this section.
 - b. A member-control agreement may waive, in whole or in part, a member's dissenting rights under sections 10-32-54 and 10-32-55, but may not waive dissenters' rights under subdivision a of subsection 2 of section 10-32-131.
 - c. A member-control agreement may not include an agreement to give transfer consent.
 - d. A member-control agreement may include a business continuation agreement only if the articles of organization grant the members the power to enter into business continuation agreements ~~and only if~~

entered into after the limited liability company has incurred an event of dissolution.

SECTION 132. AMENDMENT. Section 10-32-51 of the North Dakota Century Code is amended and reenacted as follows:

10-32-51. Required records and information.

1. A limited liability company shall keep at its principal executive office, or at another place or places within the United States determined by the board of governors:
 - a. A current list of the full name and last-known business, residence, or mailing address of each member, each governor, and the president;
 - b. A current list of the full name and last-known business, residence, or mailing address of each assignee of financial rights other than a secured party and a description of the rights assigned;
 - c. A copy of the articles of organization and all amendments to the articles;
 - d. Copies of any currently effective written operating agreement;
 - e. Copies of the limited liability company's federal, state, and local income tax returns and reports, if any, for the three most recent years;
 - f. Financial statements required by section 10-32-52;
 - g. Records of all proceedings of members for the last three years;
 - h. Records of all proceedings of the board of governors for the last three years;
 - i. Reports made to members generally within the last three years;
 - j. Member-control agreements described in section 10-32-50;
 - k. A statement of all contributions accepted under subsection 3 of section 10-32-56 including for each contribution:
 - (1) The identity of the member to whom the contribution relates;
 - (2) The class or series to which the contribution pertains;
 - (3) The amount of cash accepted by the limited liability company or promised to be paid to the limited liability company;
 - (4) A description of any services rendered to or for the benefit of the limited liability company or promised to be rendered to or for the benefit of the limited liability company; and
 - (5) The value accorded under subsection 4 of section 10-32-56 to:

- (a) Any other property transferred or promised to be transferred to the limited liability company; and
 - (b) Any services rendered to or for the benefit of the limited liability company or promised to be rendered to or for the benefit of the limited liability company;
 - l. A statement of all contribution agreements made under section 10-32-58, including for each contribution agreement:
 - (1) The identity of the would-be contributor;
 - (2) The class or series to which the future contribution pertains; and
 - (3) As to each future contribution to be made, the same information as subdivision k of subsection 1 requires for contributions already accepted;
 - m. A statement of all contribution allowance agreements made under section 10-32-59, including for each contribution allowance agreement:
 - (1) The identity of the would-be contributor;
 - (2) The class or series to which the future contribution would pertain; and
 - (3) As to each future contribution allowed to be made, the same information as subdivision k of subsection 1 requires for contributions already accepted;
 - n. An explanation of any restatement of value made under section 10-32-57;
 - o. Any written consents obtained from members under this chapter;
 - p. A copy of agreements, contracts, or other arrangements or portions of them incorporated by reference under subsections 6 through 8 of section 10-32-56.
2. A member of a limited liability company has an absolute right, upon written demand, to examine and copy, in person or by a legal representative, at any reasonable time, and the limited liability company shall make available within ten days after receipt by a manager of the limited liability company of the written demand, all documents referred to in subsection 1.
3. A member of a limited liability company who has been a member for at least six months immediately preceding the member's demand or who is the holder of record of at least five percent of all membership interests of the limited liability company has a right, upon written demand, to examine and copy, in person or by a legal representative, other limited liability company records at any reasonable time only if the member demonstrates a proper purpose for the examination. A "proper

purpose" is one reasonably related to the person's interest as a member of a limited liability company.

4. On application of the limited liability company, a court in this state may issue a protective order permitting the limited liability company to withhold portions of the records of proceedings of the board of governors for a reasonable period of time, not to exceed twelve months, in order to prevent premature disclosure of confidential information that would be likely to cause competitive injury to the limited liability company. A protective order may be renewed for successive reasonable periods of time, each not to exceed twelve months and in total not to exceed thirty-six months, for good cause shown. In the event a protective order is issued, the statute of limitations for any action that the member might bring as a result of information withheld automatically extends for the period of delay. If the court does not issue a protective order with respect to any portion of the records of proceedings as requested by the limited liability company, it shall award reasonable expenses, including attorney's fees and disbursements, to the member. This subsection does not limit the right of a court to grant other protective orders or impose other reasonable restrictions on the nature of the limited liability company records that may be copied or examined under subsections 2 and 3 or the use or distribution of the records by the demanding member.
5. A member who has gained access under this section to any limited liability company record may not use or furnish to another for use the limited liability company record or a portion of the contents for any purpose other than a proper purpose. Upon application of the limited liability company, a court may issue a protective order or order other relief as may be necessary to enforce the provisions of this subsection.
6. Copies of the information referred to in subsection 1 must be furnished at the expense of the limited liability company. In all other cases, the limited liability company may charge the requesting party a reasonable fee to cover the expenses of providing the copy.
7. The records maintained by a limited liability company may utilize any information storage technique, including, for example, punched holes, printed or magnetized spots, or microimages, even though that makes them illegible visually, if the records can be converted accurately and within a reasonable time, into a form that is legible visually and whose contents are assembled by related subject matter to permit convenient use by people in the normal course of business. A limited liability company shall convert any of the records referred to in subsections 2 and 3 upon the request of a person entitled to inspect them, and the expense of the conversion must be borne by the person who bears the expense of copying pursuant to subsection 6. A copy of the conversion is admissible in evidence, and is acceptable for all other purposes, to the same extent as the existing or original records would be if they were legible visually.

SECTION 133. AMENDMENT. Section 10-32-52 of the North Dakota Century Code is amended and reenacted as follows:

10-32-52. Financial statements.

1. A limited liability company shall, upon written request by a member, ~~furnish~~ prepare annual financial statements within one hundred eighty days after the close of the limited liability company's fiscal year, including at least a balance sheet as of the end of each fiscal year and a statement of income for the fiscal year, prepared on the basis of accounting methods reasonable in the circumstances. The financial statements may be consolidated statements of the limited liability company and one or more of its subsidiaries. ~~In the case of~~
 - a. If the statements are audited by a public accountant, each copy must be accompanied by a report setting forth the opinion of the accountant on the statements; in other cases,
 - b. If the statements are not audited by a public accountant each copy must be accompanied by a statement of the treasurer or other person in charge of the limited liability company's financial records stating:
 - (1) Stating the reasonable belief of the person that the financial statements were prepared in accordance with accounting methods reasonable in the circumstances; describing;
 - (2) Describing the basis of presentation; and describing
 - (3) Describing any respects in which the financial statements were not prepared on a basis consistent with those prepared for the previous year.
2. Upon written request by a member, a limited liability company shall furnish its most recent annual financial statements as required under subsection 1 no later than ten business days after receipt of a member's written request. "Furnish" for purposes of this subsection means that the limited liability company shall deliver or mail, postage prepaid, the financial statements to the address specified by the requesting member.

SECTION 134. Section 10-32-52.1 of the North Dakota Century Code is created and enacted as follows:

10-32-52.1. Equitable remedies. If a limited liability company or a manager or governor of the limited liability company violates this chapter, a court in this state, in an action brought by a member of the limited liability company, may grant equitable relief it considers just and reasonable in the circumstances and award expenses, including attorneys' fees and disbursements, to the member.

SECTION 135. AMENDMENT. Section 10-32-53 of the North Dakota Century Code is amended and reenacted as follows:

10-32-53. Actions by members. No action may be brought in this state for violations of this chapter by a member in the right of a domestic or foreign limited liability company unless the plaintiff is a member at the time of the transaction of which the plaintiff complains, or the plaintiff's membership interests thereafter devolved upon the plaintiff by operation of law from a person who was a member at such time.

1. In any action thereafter instituted in the right of any domestic or foreign limited liability company by the member, the court having jurisdiction,

upon final judgment and finding that the action was brought without reasonable cause, may require the plaintiff to pay the parties named as defendant the reasonable expenses, including fees of attorneys, incurred by them in defense of such action.

2. In any action now pending or hereafter instituted or maintained in the right of any domestic or foreign limited liability company by the owner of less than five percent of the membership interests, unless the membership interest of such owner has a market value in excess of twenty-five thousand dollars, the limited liability company in whose ~~rights~~ right such action is brought is entitled at any time before final judgment to require the plaintiff to give security for the reasonable expenses, including attorney's fees, that may be incurred by it in connection with such action or may be incurred by other parties named as defendant for which it may become legally liable.
 - a. Market value must be determined on the date the plaintiff institutes the action or, in the case of an intervenor, on the date the intervenor becomes a party to the action.
 - b. The amount of the security may from time to time be increased or decreased, in the discretion of the court, upon showing that the security provided has or may become inadequate or is excessive.
 - c. The limited liability company has recourse to such security in such amount as the court having jurisdiction determines upon the termination of the action, whether or not the court finds the action was brought without reasonable cause.

SECTION 136. AMENDMENT. Section 10-32-54 of the North Dakota Century Code is amended and reenacted as follows:

10-32-54. Rights of dissenting members.

1. Subject to a member-control agreement under section 10-32-50, a member of a limited liability company may dissent from, and obtain payment for the fair value of the member's membership interests in the event of, any of the following limited liability company actions:
 - a. An amendment of the articles of organization that materially and adversely affects the rights or preferences of the membership interests of the dissenting member in that it:
 - (1) Alters or abolishes a preferential right of the membership interests;
 - (2) Creates, alters, or abolishes a right in respect of the redemption of the membership interests, including a provision respecting a sinking fund for the redemption or repurchase of the membership interests;
 - (3) Alters or abolishes a preemptive right of the owner of the membership interests to make a contribution;
 - (4) Excludes or limits the right of a member to vote on a matter, or to cumulate votes, except as the right may be excluded or

- limited through the acceptance of contributions or the making of contribution agreements pertaining to membership interests with similar or different voting rights;
- (5) Changes a member's right to resign or retire;
 - (6) Establishes or changes the conditions for or consequences of expulsion;
 - (7) Changes the statement required under subdivision e f of subsection 1 of section 10-32-07; or
 - (8) Changes the statement required under subdivision ~~f~~ g of subsection 1 of section 10-32-07; i
- b. A sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the limited liability company ~~not made in the usual or regular course of its business~~, but not including a transaction permitted without member approval under section 10-32-108, a disposition in dissolution described in subsection 4 of section 10-32-113, ~~or~~ a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the members in accordance with their respective membership interests within one year after the date of disposition;
 - c. A plan of merger to which the limited liability company is a party, except as provided in paragraph 1 of subdivision a of subsection 2 of section 10-32-131 and subject to subsection 3 of section 10-32-131;
 - d. A plan of exchange to which the limited liability company is a party as the organization whose ownership interests will be acquired by the acquiring organization, if the membership interests being acquired are entitled to be voted on the plan;
 - e. Any other limited liability company action taken pursuant to a member vote with respect to which the articles of organization, the operating agreement, or a resolution approved by the board of governors directs that dissenting members may obtain payment for their membership interests; or
 - f. A resolution of the board of governors under subsection 2 of section 10-32-131 to implement a business continuation agreement.
2. The members of a limited liability company who have a right under this section to obtain payment for their membership interests do not have a right at law or in equity to have a limited liability company action described in subsection 1 set aside or rescinded, except when the limited liability company action is fraudulent with regard to the complaining member or the limited liability company.

SECTION 137. AMENDMENT. Section 10-32-55 of the North Dakota Century Code is amended and reenacted as follows:

10-32-55. Procedures for asserting dissenters' rights.

1. For purposes of this section:
 - a. "Limited liability company" means a limited liability company whose members have obtained rights to dissent under subsection 1 of section 10-32-54 and includes any successor by merger.
 - b. "Fair value of the membership interests" means the value of the membership interests of a limited liability company immediately before the effective date of the limited liability company action referred to in subsection 1 of section 10-32-54.
 - c. "Interest" means interest beginning five days after the effective date of the limited liability company action referred to in subsection 1 of section 10-32-54, up to and including the date of payment, calculated at the rate provided in section 28-20-34 for interest on verdicts and judgments.
 - d. "Member" includes a former member when dissenters' rights exist because:
 - (1) The membership of that former member has terminated causing dissolution; and
 - (2) The dissolved limited liability company has then either entered into a winding-up merger under subsection 3 of section 10-32-112 or has disposed of its assets pursuant to a business continuation agreement under subsection 2 of section 10-32-131.
2. If a limited liability company calls a member meeting at which any action described in subsection 1 of section 10-32-54 is to be voted upon, the notice of the meeting must inform each member of the right to dissent and must include a copy of section 10-32-54 and this section and, if applicable, subsections 2 and 3 of section 10-32-131. For members who have assigned some or all of their financial rights, the description must also include the procedures under subsection 8.
3. If the proposed action must be approved by the members, a member who wishes to exercise dissenters' rights must file with the limited liability company before the vote on the proposed action a written notice of intent to demand the fair value of the membership interests owned by the member and must not vote the membership interests in favor of the proposed action.
4. After the proposed action has been approved by the board of governors and, if necessary, the members, the limited liability company shall send to all members who have complied with subsection 3 and to all members entitled to dissent if no member vote was required, a notice that contains:
 - a. The address to which a demand for payment must be sent in order to obtain payment and the date by which the demand must be received;
 - b. A form to be used to certify the date on which the member acquired the membership interests and to demand payment; and

- c. A copy of section 10-32-54, this section and, if applicable, subsections 2 and 3 of section 10-32-131.
5. In order to receive the fair value of the membership interests, a dissenting member must demand payment within thirty days after the notice required by subsection 4 was given, but the dissenter retains all other rights of a member until the proposed action takes effect.
6. After the limited liability company action takes effect, or after the limited liability company receives a valid demand for payment, whichever is later, the limited liability company shall remit to each dissenting member who has complied with subsections 3, 4, and 5, the amount the limited liability company estimates to be the fair value of the membership interests, plus interest, accompanied by:
 - a. The limited liability company's closing balance sheet and statement of income for a fiscal year ending not more than sixteen months before the effective date of the limited liability company action, together with the latest available interim financial statements;
 - b. An estimate by the limited liability company of the fair value of the membership interests and a brief description of the method used to reach the estimate; and
 - c. A copy of section 10-32-54, this section; and, if applicable, subsections 2 and 3 of section 10-32-131.
7. The limited liability company may withhold the remittance described in subsection 6 from a person who was not a member on the date the action dissented from was first announced to the public. If the dissenter has complied with subsections 3, 4, and 5, the limited liability company shall forward to the dissenter the materials described in subsection 6, a statement of the reason for withholding the remittance, and an offer to pay to the dissenter the amount listed in the materials if the dissenter agrees to accept that amount in full satisfaction. The dissenter may decline the offer and demand payment under subsection 8. Failure to do so entitles the dissenter only to the amount offered. If the dissenter makes demand, subsections 9 and 10 apply.
8. If a dissenter believes that the amount remitted under subsections 5, 6, and 7 is less than the fair value of the membership interests plus interest, the dissenter may give written notice to the limited liability company of the dissenter's own estimate of the fair value of the membership interests, plus interest, within thirty days after the limited liability company mails the remittance under subsections 5, 6, and 7, and demand payment of the difference. Otherwise, a dissenter is entitled only to the amount remitted by the limited liability company.
9. If the limited liability company receives a demand under subsection 8, it shall, within sixty days after receiving the demand, either pay to the dissenter the amount demanded or agreed to by the dissenter after discussion with the limited liability company or file in court a petition requesting that the court determine the fair value of the membership interests, plus interest. The petition must be filed in the county in which the registered office of the limited liability company is located, except that a surviving foreign corporation that receives a demand relating to

the membership interests of a constituent limited liability company shall file the petition in the county in this state in which the last registered office of the constituent limited liability company was located. The petition must name as parties all dissenters who have demanded payment under subsection 8 and who have not reached agreement with the limited liability company. The limited liability company shall, after filing the petition, serve all parties with a summons and copy of the petition under the rules of civil procedure. Nonresidents of this state may be served by registered or certified mail or by publication as provided by law. Except as otherwise provided, the rules of civil procedure apply to this proceeding. The jurisdiction of the court is plenary and exclusive. The court may appoint appraisers, with powers and authorities the court considers proper, to receive evidence on and recommend the amount of the fair value of the membership interests. The court shall determine whether the member or members in question have fully complied with the requirements of this section and shall determine the fair value of the membership interests, taking into account any and all factors the court finds relevant, computed by any method or combination of methods that the court, in its discretion, sees fit to use, whether or not used by the limited liability company or by a dissenter. The fair value of the membership interests as determined by the court is binding on all members, wherever located. A dissenter is entitled to judgment for the amount by which the fair value of the membership interests as determined by the court, plus interest, exceeds the amount, if any, remitted under subsections 5, 6, and 7, but is not liable to the limited liability company for the amount, if any, by which the amount, if any, remitted to the dissenter under subsection 5 exceeds the fair value of the membership interests as determined by the court, plus interest.

10. The court shall determine the costs and expenses of a proceeding under subsection 9, including the reasonable expenses and compensation of any appraisers appointed by the court, and shall assess those costs and expenses against the limited liability company, except that the court may assess part or all of those costs and expenses against a dissenter whose action in demanding payment is found to be arbitrary, vexatious, or not in good faith.
11. If the court finds that the limited liability company has failed to comply substantially with this section, the court may assess all fees and expenses of any experts or attorneys as the court considers equitable. These fees and expenses may also be assessed against a person who has acted arbitrarily, vexatiously, or not in good faith in bringing the proceeding, and may be awarded to a party injured by those actions.
12. The court may award, in its discretion, fees and expenses to an attorney for the dissenters out of the amount awarded to the dissenters, if any.
13. When an assignment of some or all of the financial rights of a membership interest is in effect, then as to that membership interest the provisions of subsections 1 through 12 must be followed subject to the following revisions:
 - a. All rights to be exercised and actions to be taken by a member under subsection 2 must be taken by the member and not by any assignee of the member's financial rights. As between the limited

liability company and the assignees, the actions taken or omitted by the member bind the assignees.

- b. Instead of remitting a payment under subsection 6, the limited liability company shall forward to the dissenter member:
 - (1) An offer to pay the fair value of the membership interests with that amount to be allocated among and paid to the member and the assignees of financial rights according to the terms of the assignments reflected in the required records; and
 - (2) A statement of that allocation.
- c. If the dissenter member accepts the amount of the offer made under subdivision b but disputes the allocation, the dissenter shall promptly so notify the limited liability company and promptly after the notification bring an action to determine the proper allocation. The suit must be filed in the county in which the registered office of the limited liability company is located, or in the case of a surviving foreign corporation that is complying with this section following a merger or an exchange with a constituent limited liability company the suit must be filed in the county in this state in which the last registered office of the constituent limited liability company was located. The suit must name as parties the member, the limited liability company, and all assignees of the member's financial rights. Upon being served with the action, the limited liability company shall promptly pay into the court the amount offered under subdivision b and shall then be dismissed from the action.
- d. If the dissenter considers the amount offered under subdivision b inadequate, the dissenter may decline the offer and demand payment under subsection 8. If the dissenter makes demand, subsections 9 and 10 apply, with the court having jurisdiction also to determine the correctness of the allocation.
- e. If the member fails to take action under either subdivision c or d, then:
 - (1) As to the limited liability company, both the member and the assignees of the member's financial rights are limited to the amount and allocation offered under subdivision b; and
 - (2) The limited liability company discharges its obligation of payment by making payment according to the amount and allocation offered under subdivision b.

SECTION 138. AMENDMENT. Section 10-32-56 of the North Dakota Century Code is amended and reenacted as follows:

10-32-56. Authorization, form, and acceptance of contributions.

1. Subject to any restrictions in the articles of organization and only when authorized by the board of governors, a limited liability company may accept contributions under subsections 2 and 3, make contribution agreements under section 10-32-58, and make contribution allowance agreements under section 10-32-59.

2. A person may make a contribution to a limited liability company by paying money or transferring the ownership of an interest in property to the limited liability company for rendering services to or for the benefit of the limited liability company.
3. No purported contribution is to be treated or considered as a contribution, unless:
 - a. The board of governors accepts the contribution on behalf of the limited liability company and in that acceptance describes the contribution and states the value being accorded to the contribution; and
 - b. The fact of contribution and the contribution's accorded value are both reflected in the required records of the limited liability company.
4. The determinations of the board of governors as to the amount or fair value or the fairness to the limited liability company of the contribution accepted or to be accepted by the limited liability company or the terms of payment or performance, including under a contribution agreement in section 10-32-58, and a contribution allowance agreement in section 10-32-59, are presumed to be proper if they are made in good faith and on the basis of accounting methods, or a fair valuation or other method, reasonable in the circumstances. Governors who are present and entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against approving a consideration that is unfair to the limited liability company, or overvalue property or services received or to be received by the limited liability company as a contribution, are jointly and severally liable to the limited liability company for the benefit of the then members who did not consent to and are damaged by the action, to the extent of the damages of those members. A governor against whom a claim is asserted pursuant to this subsection, except in case of knowing participation in a deliberate fraud, is entitled to contribution on an equitable basis from other governors who are liable under this subsection.
5. All the membership interests of a limited liability company must:
 - a. Be of one class, without series, unless the articles of organization establish, or authorize the board of governors to establish, more than one class or series within classes;
 - b. Be ordinary membership interests entitled to vote as provided in section 10-32-45, and have equal rights and preferences in all matters not otherwise provided for by the board of governors unless and to the extent that the articles of organization have fixed the relative rights and preferences of different classes and series; and
 - c. Share profits and losses as provided in section 10-32-36 and be entitled to distributions as provided in sections 10-32-60 and 10-32-61 and subdivision c of subsection 1 of section 10-32-131.
6. Subject to any restrictions in the articles of organization, the power granted in subsection 5 may be exercised by a resolution approved by the affirmative vote of a majority of the directors present establishing a

class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series established in the articles of organization or by resolution of the board of governors.

7. A statement executed by a manager setting forth the name of the limited liability company and the text of the resolution and certifying the adoption of the resolution and the date of adoption must be filed with the secretary of state together with the fees provided in section 10-32-150 before the acceptance of any contributions for which the resolution creates rights or preferences not set forth in the articles of organization. The resolution is effective when the statement has been filed with the secretary of state unless the statement specifies a later effective date within thirty days of filing the statement with the secretary of state.
8. Without limiting the authority granted in this section, a limited liability company may have membership interests of a class or series:
 - a. Subject to the right of the limited liability company to redeem any of those membership interests at the price fixed for their redemption by the articles of organization or by the board of governors;
 - b. Entitling the members to cumulative, partially cumulative, or noncumulative distributions;
 - c. Having preference over any class or series of membership interests for the payment of distributions of any or all kinds;
 - d. Convertible into membership interests of any other class or any series of the same or another class; or
 - e. Having full, partial, or no voting rights, except as provided in section 10-32-17.

SECTION 139. AMENDMENT. Section 10-32-58 of the North Dakota Century Code is amended and reenacted as follows:

10-32-58. Contribution agreements.

1. A contribution agreement, whether made before or after the formation of the limited liability company, is not enforceable against the would-be contributor unless it is in writing and signed by the would-be contributor.
2. ~~A~~ Unless otherwise provided in the contribution agreement, or unless all of the would-be contributors and, if in existence, the limited liability company, consent to a shorter or longer period, a contribution agreement is irrevocable for a period of six months unless the contribution agreement provides for, or unless all other would-be contributors who are a party to a contribution consent to, an earlier revocation.
3. A contribution agreement, whether made before or after the formation of a limited liability company, must be paid or performed in full at the time or times, or in the installments, if any, specified in the contribution agreement. In the absence of a provision in the contribution agreement specifying the time at which the contribution is to be paid or performed, the contribution must be paid or performed at the time or times

determined by the board of governors, but a call made by the board of governors for payment or performance on contributions must be uniform for all membership interests of the same class or for all membership interests of the same series.

4. Unless otherwise provided in the contribution agreement, in the event of default in the payment or performance of an installment or call when due, the limited liability company may proceed to collect the amount due in the same manner as a debt due the limited liability company ~~or, if the amount due remains unpaid for a period of twenty days after written notice of demand for payment has been given to the delinquent would-be contributor, the board of governors may declare a forfeiture of the contribution agreement or cancel it in accordance with this subsection.~~ If a would-be contributor does not make a required contribution of property or services, the limited liability company shall require the would-be contributor to contribute cash equal to that portion of the value, as stated in the limited liability company required records, of the contribution that has not been made.
5. ~~Upon forfeiture of a contribution agreement~~ If the amount due under a contribution agreement remains unpaid for a period of twenty days after the written notice of demand for payment has been given to the delinquent would-be contributor, the membership interests that were subject to the contribution agreement may be offered for sale by the limited liability company for a price in money equaling or exceeding the sum of the full balance owed by the delinquent would-be contributor plus the expenses incidental to the sale. ~~Any excess of net proceeds realized by the limited liability company over the sum of the amount owed by the delinquent would-be contributor plus the expenses incidental to the sale must be paid to the delinquent would-be contributor or to a legal representative. The payment must not exceed the amount of contribution actually made by the delinquent would-be contributor.~~
 - a. If the membership interests that were subject to the contribution agreement are sold pursuant to this subsection, the limited liability company shall pay to the delinquent would-be contributor or to the delinquent would-be contributor's representatives the lesser of:
 - (1) The excess of net proceeds realized by the limited liability company over the sum of the amount owed by the delinquent would-be contributor plus the expenses incidental to the sales;
or
 - (2) The amount actually paid by the delinquent would-be contributor.
 - b. If the membership interests that were subject to the contribution agreement are not sold pursuant to this subsection, the limited liability company may collect the amount due in the same manner as a debt due to the limited liability company or cancel the contribution agreement pursuant to subsection 6.
6. ~~If, within twenty days after the limited liability company offers to sell the membership interests that were subject to the defaulted contribution agreement, no prospective purchaser offers to purchase the membership~~

interests for a money price sufficient to pay the sum of the full balance owed by the delinquent would-be contributor plus the expenses incidental to the sale, or if the limited liability company has refunded to the would-be contributor or a legal representative a portion of the contribution agreement price actually paid, the contribution agreement may be canceled and the limited liability company may retain the portion of the contribution agreement price actually paid that does not exceed ten percent of the contribution agreement price. If the amount due under a contribution agreement remains unpaid for a period of twenty days after written notice of demand for payment has been given to the delinquent would-be contributor and the membership interests that were subject to the contribution agreement have not been sold pursuant to subsection 5, the limited liability company:

- a. May cancel the contribution agreement;
 - b. May retain the portion of the contribution agreement price actually paid that does not exceed ten percent of the contribution agreement; and
 - c. Shall refund to the delinquent would-be contributor or the delinquent would-be contributor's legal representatives that portion of the contribution agreement price actually paid that exceeds ten percent of the contribution price.
7. A would-be contributor's rights under a contribution agreement may not be assigned, in whole or in part, to a person who was not a member at the time of the assignment, unless all the members approve the assignment by unanimous written consent.

SECTION 140. AMENDMENT. Section 10-32-64 of the North Dakota Century Code is amended and reenacted as follows:

10-32-64. Limitations on distribution.

1. The board of governors may authorize and cause the limited liability company to make a distribution only if the board of governors determines, in accordance with subsection 2, that the limited liability company will be able to pay its debts in the ordinary course of business after making the distribution and the board of governors does not know before the distribution is made that the determination was or has become erroneous; ~~and the~~
 - a. The limited liability company may make the distribution if it is able to pay its debts in the ordinary course of business after making the distribution.
 - b. The effect of a distribution on the ability of the limited liability company to pay its debts in the ordinary course of business after making the distribution must be measured in accordance with subsection 3.
 - c. The right of the board of governors to authorize, and the limited liability company to make, distributions may be prohibited, limited, or restricted by the articles of organization or operating agreement or an agreement.

2. A determination that the limited liability company will be able to pay its debts in the ordinary course of business after the distribution is presumed to be proper if the determination is made in compliance with the standard of conduct provided in section 10-32-86 on the basis of financial information prepared in accordance with accounting methods, or a fair valuation or other method, reasonable in the circumstances. No liability under section 10-32-66 or 10-32-86 will accrue if the requirements of this subsection have been met.
3. In the case of a distribution made by a limited liability company in connection with a redemption of its membership interests, the effect of the distribution must be measured as of the date on which money or other property is transferred, or indebtedness payable in installments or otherwise is incurred, by the limited liability company, or as of the date on which the member ceases to be a member of the limited liability company, whichever is the earliest. The effect of any other distribution must be measured as of the date of its authorization if payment occurs one hundred twenty days or less following the date of authorization, or as of the date of payment if payment occurs more than one hundred twenty days following the date of authorization. The provisions of chapter 13-02.1 do not apply to distributions made by a limited liability company governed by this chapter.
4. Indebtedness of a limited liability company incurred or issued in a distribution in accordance with this section to a member who as a result of the transaction is no longer a member is on a parity with the indebtedness of the limited liability company to its general unsecured creditors, except to the extent subordinated, agreed to, or secured by a pledge of any assets of the limited liability company or a related organization, or subject to any other agreement between the limited liability company and the member.
5. A distribution may be made to the owners of a class or series of membership interests only if:
 - a. All amounts payable to the owners of membership interests having a preference for the payment of that kind of distribution, other than those owners who give notice to the limited liability company of their agreement to waive their rights to that payment, are paid; and
 - b. The payment of the distribution does not reduce the remaining net assets of the limited liability company below the aggregate preferential amount payable in the event of liquidation to the owners of membership interests having preferential rights, unless the distribution is made to those members in the order and to the extent of their respective priorities or the owners of membership interests who do not receive distributions in that order give notice to the limited liability company of their agreement to waive their rights to that distribution.
6. A determination that the payment of the distribution described in subsection 5 does not reduce the remaining net assets of the limited liability company below the aggregate preferential amount payable in the event of termination to the owners of membership interests having preferential rights is presumed to be proper if the determination is made in compliance with the standard of conduct provided in section 10-32-86

on the basis of financial information prepared in accordance with accounting methods, or a fair valuation or other method, reasonable in the circumstances. Liability under section 10-32-66 or 10-32-86 will not arise if the requirements of this subsection are met.

- 6: 7. If the money or property available for distribution is insufficient to satisfy all preferences, the distributions must be made pro rata according to the order of priority of preferences by classes and by series within those classes unless those owners who do not receive distributions in that order give notice to the limited liability company of their agreement to waive their rights to that distribution.

SECTION 141. AMENDMENT. Section 10-32-66 of the North Dakota Century Code is amended and reenacted as follows:

10-32-66. Liability of governors for illegal distributions.

1. In addition to any other liabilities, a governor who is present at a meeting and fails to vote against, or who consents in writing to, a distribution made in violation of subsections 1 or 4 of section 10-32-64 or a restriction contained in the articles of organization or operating agreement or an agreement, and ~~who~~ fails to comply with the standard of conduct provided in section 10-32-86, is liable to the limited liability company, its receiver or any other person winding up its affairs, jointly and severally with all other governors so liable and to other governors under subsection 3, but only to the extent that the distribution exceeded the amount that properly could have been paid under section 10-32-64.
2. A governor against whom an action is brought under this section with respect to a distribution may implead in that action all members who received the distribution and may compel pro rata contribution from them in that action to the extent provided in subsection 1 of section 10-32-65.
3. A governor against whom an action is brought under this section with respect to a distribution may implead in that action all other governors who voted for or consented in writing to the distribution and may compel pro rata contribution from them in that action.
4. An action may not be commenced under this section more than two years from the date of the distribution.

SECTION 142. AMENDMENT. Section 10-32-67 of the North Dakota Century Code is amended and reenacted as follows:

10-32-67. Organization.

1. If the first board of governors is not named in the articles of organization, the organizers may elect the first board of governors or may act as governors with all of the powers, rights, duties, and liabilities of governors, until governors are elected or until a contribution is accepted, whichever occurs first.
2. After the issuance of the certificate of organization, the organizers or the governors named in the articles of organization shall either hold an organizational meeting at the call of a majority of the organizers or of

the governors named in the articles, or take written action, for the purposes of transacting business and taking actions necessary or appropriate to complete the organization of the limited liability company, including, without limitation, amending the articles, electing governors, adopting an operating agreement, electing managers, adopting banking resolutions, authorizing or ratifying the purchase, lease, or other acquisition of suitable space, furniture, furnishings, supplies, and materials, approving a limited liability company seal, adopting a fiscal year for the limited liability company, contracting to receive and accept contributions, and making any appropriate tax elections.

- a. If a meeting is held, the person or persons calling the meeting shall give at least three days notice of the meeting to each organizer or governor named, stating the date, time, and place of the meeting.
- b. Organizers and governors may waive notice of an organizational meeting in the same manner that a governor may waive notice of meetings of the board of governors under subsection 5 of section 10-32-80.

SECTION 143. AMENDMENT. Section 10-32-68 of the North Dakota Century Code is amended and reenacted as follows:

10-32-68. Operating agreement.

1. A limited liability company may, but need not, have an operating agreement. The operating agreement may contain any provision relating to the management of the business or the regulation of the affairs of the limited liability company not inconsistent with law or the articles of organization. An act of the board under subsection 2 and of the members under subsection 3 will be considered part of the operating agreement only if the act expressly states that it is intended to constitute or revise the operating agreement.
2. An initial operating agreement may be adopted pursuant to section 10-32-67 by the organizers or by the first board of governors. Unless reserved by the articles of organization to the members, the power to adopt, amend, or repeal the operating agreement is vested in the board of governors. The power of the board of governors is subject to the power of the members, exercisable in the manner provided in subsection 3, to adopt, amend, or repeal the operating agreement adopted, amended, or repealed by the board of governors. After the adoption of the initial operating agreement, the board of governors may not adopt, amend, or repeal an operating agreement provision fixing a quorum for meetings of members, prescribing procedures for removing governors or filling vacancies in the board of governors, or fixing the number of governors or their classifications, qualifications, or terms of office, but may adopt or amend an operating agreement provision to increase the number of governors.
3. ¶ Unless the articles or operating agreement provides otherwise, members owning five percent or more of the voting power of the members entitled to vote may propose a resolution for action by the members to adopt, amend, or repeal operating agreement provisions adopted, amended, or repealed by the board of governors and the

resolution ~~sets~~ must set forth the provision or provisions proposed for adoption, amendment, or repeal, the limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in subsections 2 through 4 of section 10-32-16, for amendment of the articles of organization. The articles or operating agreement may impose different or additional requirements for the members to adopt, amend, or repeal the operating agreement.

SECTION 144. AMENDMENT. Section 10-32-72 of the North Dakota Century Code is amended and reenacted as follows:

10-32-72. Terms.

1. With respect to length of terms:

a. Unless fixed terms are provided for in the articles or operating agreement, a governor serves for an indefinite term that expires at the next regular meeting of the members.

(1) A fixed term of a governor, other than an ex officio governor, must not exceed five years. A governor holds office for the term for which the governor was elected and until a successor is elected and has qualified, or until the earlier death, resignation, removal, or disqualification of the governor.

(2) An ex officio governor serves as long as the governor holds the office or position designated in the articles or operating agreement.

b. Unless the articles or operating agreement provides otherwise, a governor holds office until expiration of the term for which the governor was elected or appointed and until a successor is elected and has qualified or until the earlier death, resignation, removal, or disqualification of the governor.

c. A decrease in the number of governors or term of office does not shorten an incumbent director's term.

d. Except as provided in the articles or operating agreement, the term of a governor filling a vacancy expires at the end of the unexpired term that the director is filling.

2. The articles or operating agreement may provide for staggering the terms of governors by dividing the total number of governors into groups.

SECTION 145. AMENDMENT. Section 10-32-77 of the North Dakota Century Code is amended and reenacted as follows:

10-32-77. Resignation.

1. A governor may resign at any time by giving written notice to the limited liability company. The resignation is effective without acceptance when the notice is given to the limited liability company, unless a later effective time is specified in the notice.

2. If a resignation is made effective at a later time, the board may fill the pending vacancy before the effective time if the board of governors provides that the successor does not take office until the effective time.

SECTION 146. AMENDMENT. Section 10-32-78 of the North Dakota Century Code is amended and reenacted as follows:

10-32-78. ~~Removal~~ Nonjudicial removal of governors.

1. The provisions of this section apply unless modified by the articles of organization or the operating agreement.
2. A governor may be removed at any time, with or without cause, if:
 - a. The governor was named by the board of governors to fill a vacancy;
 - b. The members have not elected governors in the interval between the time of the appointment to fill a vacancy and the time of the removal; and
 - c. A majority of the remaining governors present affirmatively votes to remove the governor.
3. Any one or all of the governors may be removed at any time, with or without cause, by the affirmative vote of the owners of the proportion of the voting power of the membership interests of the classes or series the governor represents sufficient to elect them. If less than the entire board of governors is to be removed, no one of the governors may be removed if the votes cast against the governor's removal which, if then cumulatively voted at the election of the entire board of governors, or if there be classes of governors at an election of the class of governors of which the governor is a part, would be sufficient to elect the governor. Whenever the members of any class are entitled to elect one or more governors by the provisions of the articles of the organization, the provisions of this section apply, in respect to the removal of a governor or governors so elected, to the vote of the members of that class and not to the vote of the members as a whole.
4. New governors may be elected at a meeting at which governors are removed.

SECTION 147. Section 10-32-78.1 of the North Dakota Century Code is created and enacted as follows:

10-32-78.1. Removal of governors by judicial proceeding.

1. The district court of the county where the principal executive office of a limited liability company is located may remove any governor of the limited liability company from office in a proceeding commenced either by the limited liability company, its members holding at least ten percent of the voting power of any class of membership interests, or the attorney general, if the court finds that:
 - a. The governor engaged in fraudulent, dishonest conduct, or gross abuse of authority or discretion with respect to the limited liability

company or a final judgment has been entered finding that the governor has violated section 10-33-86; and

- b. Removal is in the best interest of the limited liability company.
2. The court that removes a governor may bar the governor from serving on the board of governors for a period prescribed by the court.
3. If members or the attorney general commence a proceeding under subsection a, then the limited liability company shall be made a party defendant.

SECTION 148. AMENDMENT. Section 10-32-79 of the North Dakota Century Code is amended and reenacted as follows:

10-32-79. Vacancies.

1. Unless different rules for filling vacancies are provided for in the articles or operating agreement:
 - a. Vacancies on the board of governors resulting from the death, resignation, removal, or disqualification of a governor may be filled by the affirmative vote of a majority of the remaining governors, even though less than a quorum; and
 - b. Vacancies on the board of governors resulting from newly created governorships may be filled by the affirmative vote of a majority of the governors serving at the time of the increase.
2. Each governor elected under this section to fill a vacancy holds office until a qualified successor is elected by the members at the next regular or special meeting of the members.
3. A vacancy that will occur at a specific later date may be filled before the vacancy occurs but the new governor may not take office until the vacancy occurs.

SECTION 149. AMENDMENT. Section 10-32-80 of the North Dakota Century Code is amended and reenacted as follows:

10-32-80. Board of governors meetings.

1. Meetings of the board of governors may be held from time to time as provided in the articles of organization or operating agreement at any place within or without the state that the board of governors may select or by any means described in subsection 2. If the articles, operating agreement, or board of governors fails to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles or operating agreement provide otherwise.
2. A board of governors meeting may be conducted by:
 - a. A conference among governors using any means of communication through which the governors may simultaneously hear each other during the conference constitutes a board of governors meeting, if the same notice is given of the conference as would be required by

- subsection 3 for a meeting, and if the number of governors participating in the conference ~~would be sufficient to constitute~~ is a quorum at a meeting. Participation in a meeting by ~~that~~ this means constitutes personal presence ~~in person~~ at the meeting; or
- b. By any means of communication through which the governor, other governors so participating, and all governors physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by ~~that~~ this means constitutes personal presence ~~in person~~ at the meeting.
 3. Unless the articles of organization or operating agreement provide for a different time period, a governor may call a board meeting by giving at least ten days' notice or, in the case of organizational meetings under subsection 2 of section 10-32-67, at least three days' notice to all governors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless the articles or operating agreement require it.
 4. If the ~~day or~~ date, time, and place of a board of governors meeting have been provided in the articles or operating agreement, or announced at a previous meeting of the board of governors, no notice is required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.
 5. A governor may waive notice of a meeting of the board of governors. A waiver of notice by a governor entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, or by attendance. Attendance by a governor at a meeting is a waiver of notice of that meeting, except where the governor objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection.

SECTION 150. AMENDMENT. Section 10-32-81 of the North Dakota Century Code is amended and reenacted as follows:

10-32-81. Absent governors. If the articles of organization or operating agreement so provide, a governor may give advance written consent or opposition to a proposal to be acted on at a board of governors meeting. If the governor is not present at the meeting, consent or opposition to a proposal does not constitute presence for purposes of determining the existence of a quorum, but consent or opposition must be counted as a the vote of a governor present at the meeting in favor of or against the proposal and must be entered in the minutes or other record of action at the meeting, if the proposal acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the governor has consented or objected.

SECTION 151. AMENDMENT. Section 10-32-83 of the North Dakota Century Code is amended and reenacted as follows:

10-32-83. Act of the board of governors. The board of governors shall take action by the affirmative vote of the greater of a majority of governors present at a duly held meeting at the time the action is taken or a majority of the minimum proportion or number of governors that would constitute a quorum for the transaction of business at a meeting, except where this chapter or the articles require

the affirmative vote of a larger proportion or number. If the articles require a larger proportion or number than is required by this chapter for a particular action, the articles control.

SECTION 152. AMENDMENT. Section 10-32-84 of the North Dakota Century Code is amended and reenacted as follows:

10-32-84. Action without a meeting.

1. An action required or permitted to be taken at a board of governors meeting may be taken by written action signed by all of the governors. If the articles so provide, any action, other than an action requiring member approval, may be taken by written action signed by the number of governors that would be required to take the same action at a meeting of the board of governors at which all governors were present.
2. The written action is effective when signed by the required number of governors, unless a different effective time is provided in the written action.
3. When written action is permitted to be taken by less than all governors, all governors must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A governor who does not sign or consent to the written action has no liability for the action or actions ~~taken thereby~~.

SECTION 153. AMENDMENT. Section 10-32-85 of the North Dakota Century Code is amended and reenacted as follows:

10-32-85. Committees.

1. A resolution approved by the affirmative vote of a majority of the board of governors may establish committees having the authority of the board in the management of the business of the limited liability company only to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent governors or other independent persons to consider legal rights or remedies of the limited liability company and whether those rights and remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the board of governors.
2. Committee members must be individuals. Unless the articles or operating agreement provide for a different membership or manner of appointment, a committee consists of one or more persons, who need not be governors, appointed by ~~affirmative vote of a majority of the governors present~~ the board.
3. Sections 10-32-80 through 10-32-84 apply to committees and members of committees to the same extent as those sections apply to the board of governors and governors.
4. Minutes, if any, of committee meetings must be made available upon request to members of the committee and to any governor.

5. The establishment of, delegation of authority to, and action by a committee does not alone constitute compliance by a governor with the standard of conduct set forth in section 10-32-86.
6. Committee members are considered to be governors for purposes of sections 10-32-86, 10-32-87, and 10-32-99.

SECTION 154. AMENDMENT. Section 10-32-86 of the North Dakota Century Code is amended and reenacted as follows:

10-32-86. Standard of conduct for governors.

1. A governor shall discharge the duties of the position of governor in good faith, in a manner the governor reasonably believes to be in the best interests of the limited liability company, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a governor of the limited liability company.
2. A governor is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:
 - a. One or more managers or employees of the limited liability company whom the governor reasonably believes to be reliable and competent in the matters presented;
 - b. Counsel, public accountants, or other persons as to matters that the governor reasonably believes are within the person's professional or expert competence; or
 - c. A committee of the board of governors upon which the governor does not serve, duly established in accordance with section 10-32-85, as to matters within its designated authority, if the governor reasonably believes the committee to merit confidence.
3. Subsection 2 does not apply to a governor who has knowledge concerning the matter in question that makes the reliance otherwise permitted by subsection 2 unwarranted.
4. A governor who is present at a meeting of the board of governors when an action is approved by the affirmative vote of a majority of the governors present is presumed to have assented to the action approved, unless the governor:
 - a. Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection, in which case the governor is not considered to be present at the meeting for any purpose of this chapter;
 - b. Votes against the action at the meeting; or
 - c. Is prohibited by ~~section 10-32-87~~ from voting on the action by the articles; by the operating agreement; as the result of the decision to

approve, ratify, or authorize a transaction pursuant to section 10-32-87; or by a conflict of interest policy adopted by the board.

5. A governor's personal liability to the limited liability company or its members for monetary damages for breach of fiduciary duty as a governor may be eliminated or limited in the articles of organization. The articles may not eliminate or limit the liability of a governor:
 - a. For any breach of the governor's duty of loyalty to the limited liability company or its members;
 - b. For acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
 - c. Under section 10-32-66;
 - d. For any transaction from which the governor derived an improper personal benefit; or
 - e. For any act or omission occurring before the date when the provision in the articles of organization eliminating or limiting liability becomes effective.
6. In discharging the duties of the position of governor, a governor may, in considering the best interests of the limited liability company, consider the interests of the limited liability company's employees, customers, suppliers, and creditors, the economy of the state and nation, community and societal considerations, and the long-term as well as short-term interests of the limited liability company and its members including the possibility that these interests may be best served by the continued independence of the limited liability company.

SECTION 155. AMENDMENT. Section 10-32-87 of the North Dakota Century Code is amended and reenacted as follows:

10-32-87. Governor conflicts of interest.

1. A contract or other transaction between a limited liability company and one or more of its governors; ~~or between a limited liability company and an organization in or of which one or more of its governors are governors, directors, managers, officers, or legal representatives or a member of the family of the governor; a director of a related organization or a member of the family of a director of a related organization; or an organization in or of which the limited liability company's governor or a member of the family of the governor is a governor, director, manager, officer, or legal representative or have has~~ a material financial interest, is not void or voidable because the governor ~~or governors~~ or the other ~~organizations are parties~~ organization is a party or because the governor ~~or governors~~ are is present at the meeting of the members or the board of governors or a committee at which the contract or transaction is authorized, approved, or ratified, if at least one of the requirements of subsection 2 is satisfied.
2. The contract or transaction described in subsection 1 is not void or voidable if:

- a. The contract or transaction was, and the person asserting the validity of the contract or transaction sustains the burden of establishing that the contract or transaction was, fair and reasonable as to the limited liability company at the time it was authorized, approved, or ratified;
 - b. The material facts as to the contract or transaction and as to the manager's interest are fully disclosed or known to the members and the contract or transaction is approved in good faith by ~~the holders of a majority of the membership interests, but membership interests owned by the interested governor may not be counted in determining the presence of a quorum and may not be voted;~~
 - (1) The owners of two-thirds of the voting power of membership interests entitled to vote that are owned by persons other than the interested governor; or
 - (2) The unanimous affirmative vote of all members, whether or not entitled to vote;
 - c. The material facts as to the contract or transaction and as to the governor's interest are fully disclosed or known to the board of governors or a committee, and the board of governors or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board of governors or committee, but the interested governor is not counted in determining the presence of a quorum and may not vote; or
 - d. The contract or transaction is a distribution described in subsection 1 of section 10-32-64 or a merger or exchange described in subsection 1 or 2 of section 10-32-100.
2. 3. For purposes of this section:
- a. A governor does not have a material financial interest in a resolution fixing the compensation of the governor or fixing the compensation of another governor as a governor, manager, employee, or agent of the limited liability company, even though the first governor is also receiving compensation from the limited liability company; and
 - b. A governor has a material financial interest in each organization in which the governor, ~~or the spouse, parents, children and spouses of children, brothers and sisters and spouses of brothers and sisters of the governor, or any combination of them have~~ or a member of the family of the governor, has a material financial interest. A "member of the family" of the governor is a spouse, parent, child, child of a spouse, brother, sister, or the spouse of any of these individuals.
4. The procedures described under subdivisions a, b, and c of subsection 2 are not required if the contract or transaction is between related parties.

SECTION 156. AMENDMENT. Section 10-32-88 of the North Dakota Century Code is amended and reenacted as follows:

10-32-88. Managers. A limited liability company must consist of one or more individuals eighteen years of age or more, and exercising the functions of the offices, however designated, of president and treasurer and may have one or more vice presidents and a secretary, as may be provided in the operating agreement. Any other managers, assistant managers, and agents, as necessary, may be elected or appointed by the board of governors or chosen in such other manner as may be provided in the operating agreement.

SECTION 157. AMENDMENT. Section 10-32-89 of the North Dakota Century Code is amended and reenacted as follows:

10-32-89. Duties of managers and agents. Unless the articles, operating agreement, or a resolution adopted by the board of governors and not inconsistent with the articles or operating agreement, provides otherwise, the managers shall have the following duties:

1. ~~Unless the articles of organization or the operating agreement provides otherwise, the~~ The president shall:
 - a. Have general active management for the business of the limited liability company;
 - b. When present, preside at all meetings of the board of governors and of the members;
 - c. See that all orders and resolutions of the board of governors are carried into effect;
 - d. Sign and deliver in the name of the limited liability company any deeds, mortgages, bonds, contracts, or other instruments pertaining to the business of the limited liability company, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the articles or operating agreement or the board of governors to some other manager or agent of the limited liability company;
 - e. Maintain records of and, whenever necessary, certify all proceedings of the board of governors and members; and
 - f. Perform other duties prescribed by the board of governors.
2. ~~Unless the articles of organization or the operating agreement provides otherwise, the~~ The vice president, if any, or if there is more than one, the vice presidents in the order determined by the board of governors shall:
 - a. In the absence or disability of the president, perform the duties and exercise the powers of the president; and
 - b. Perform other duties and have other powers as the board of governors may from time to time prescribe.
3. The treasurer shall:
 - a. Keep accurate financial records for the limited liability company;

- b. Deposit all money, drafts, and checks in the name of and to the credit of the limited liability company in the banks and depositories designated by the board of governors;
 - c. Endorse for deposit all notes, checks, and drafts received by the limited liability company as ordered by the board of governors, making proper vouchers for them;
 - d. Disburse limited liability company funds and issue checks and drafts in the name of the limited liability company, as ordered by the board of governors;
 - e. Give to the president and the board of governors, whenever requested, an account of all transactions by the treasurer and of the financial condition of the limited liability company; and
 - f. Perform other duties prescribed by the board of governors or by the president.
3. 4. The secretary, if any, shall:
- a. Attend all meetings of the board of governors, all meetings of the members, and, when required, all meetings of standing committees;
 - b. Record all proceedings of the meetings;
 - c. Give, or cause to be given, notice of all meetings of the members and meetings of the board of governors; and
 - d. Perform other duties prescribed by the board of governors.
5. Any other managers and agents of the limited liability company, as between themselves and the limited liability company, have the authority and shall perform the duties in the management of the limited liability company as may be provided in the articles of organization or the operating agreement, or as may be determined by resolution of the board not inconsistent with the articles of organization or the operating agreement.

SECTION 158. AMENDMENT. Section 10-32-91 of the North Dakota Century Code is amended and reenacted as follows:

10-32-91. Multiple managerial positions. Any number of managerial positions or functions of those positions may be held or exercised by the same ~~person~~ individual. If a document must be signed by ~~persons~~ individuals holding different positions or functions and a ~~person~~ an individual holds or exercises more than one of those positions or functions, that ~~person~~ individual may sign the document in more than one capacity, but only if the document indicates each capacity in which the ~~person~~ individual signs.

SECTION 159. AMENDMENT. Section 10-32-92 of the North Dakota Century Code is amended and reenacted as follows:

10-32-92. Managers deemed elected. In the absence of an election or appointment of managers by the board of governors, the ~~person~~ individual or

~~persons~~ individuals exercising the functions of the principal managers of the limited liability company are deemed to have been elected to those offices.

SECTION 160. AMENDMENT. Section 10-32-93 of the North Dakota Century Code is amended and reenacted as follows:

10-32-93. Contract rights. The election or appointment of a ~~person~~ an individual as a manager or agent does not, of itself, create contract rights. However, a limited liability company may enter into a contract with a manager or agent. The resignation or removal of the manager or agent is without prejudice to any contractual rights or obligations.

SECTION 161. AMENDMENT. Section 10-32-94 of the North Dakota Century Code is amended and reenacted as follows:

10-32-94. Resignation, removal, and vacancy.

1. A manager may resign at any time by giving written notice to the limited liability company. The resignation is effective without acceptance when the notice is given to the limited liability company, unless a later effective date is specified in the notice.
2. ~~A~~ Except as otherwise provided in the articles or operating agreement, a manager may be removed at any time, with or without cause, by a resolution approved by the affirmative vote of a majority of the governors present, subject to the provisions of a member-control agreement. The removal is without prejudice to any contractual rights of the officer.
3. A vacancy in an office because of death, resignation, removal, ~~or~~ disqualification or other cause, may, or in the case of the president or treasurer, must be filled for the unexpired portion of the term in the manner provided in the articles or operating agreement, or determined by the board of governors, or pursuant to section 10-32-92.

SECTION 162. AMENDMENT. Section 10-32-95 of the North Dakota Century Code is amended and reenacted as follows:

10-32-95. Delegation. Unless prohibited by the articles or operating agreement or by a resolution ~~approved by the affirmative vote of a majority of the governors present~~ adopted by the board of governors, a manager elected or appointed by the board of governors may, without the approval of the board, delegate some or all of the duties and powers of an office to other ~~persons~~ individuals. A manager who delegates the duties or powers of an office remains subject to the standard of conduct for a manager with respect to the discharge of all duties and powers so delegated.

SECTION 163. AMENDMENT. Section 10-32-96 of the North Dakota Century Code is amended and reenacted as follows:

10-32-96. Standard of conduct for managers. A manager shall discharge the duties of an office in good faith, in a manner the manager reasonably believes to be in the best interests of the limited liability company, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. ~~A person~~ An individual exercising the principal functions of an office or to whom some or all of the duties and powers of an office are delegated pursuant to section

10-32-95 is considered a manager for purposes of this section and sections 10-32-53 and 10-32-99.

SECTION 164. AMENDMENT. Section 10-32-97 of the North Dakota Century Code is amended and reenacted as follows:

10-32-97. Loans, guarantees, and suretyship.

1. A limited liability company may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist a person, if the transaction, or a class of transactions to which the transaction belongs, is approved by the affirmative vote of a majority of the governors present and:
 - a. Is in the usual and regular course of business of the limited liability company;
 - b. Is with, or for the benefit of, a related organization, an organization in which the limited liability company has a financial interest, an organization with which the limited liability company has a ~~business~~ relationship in the usual and regular course of its business, or an organization to which the limited liability company has the power to make donations any of which relationships constitute consideration sufficient to make the loan, guaranty, suretyship, or other financial assistance so approved enforceable against the limited liability company;
 - c. Is with, or for the benefit of, a member who provides services to the limited liability company, or a manager or other employee of the limited liability company or a subsidiary, including a member, manager, or employee who is a governor of the limited liability company or a subsidiary, and may reasonably be expected, in the judgment of the board of governors, to benefit the limited liability company; or
 - d. ~~Has~~ Whether or not separate consideration has been promised to the limited liability company, has been approved by the owners of two-thirds of the voting power of persons other than the interested person or persons.
2. A loan, guarantee, surety contract, or other financial assistance under subsection 1 may be with or without interest and may be unsecured or may be secured in any manner, including, without limitation, a grant of a security interest in a member's financial rights in the limited liability company.
3. This section does not grant any authority to act as a bank or to carry on the business of banking.

SECTION 165. AMENDMENT. Section 10-32-99 of the North Dakota Century Code is amended and reenacted as follows:

10-32-99. Indemnification.

1. For purposes of this section:

- a. "Limited liability company" includes a domestic or foreign limited liability company that was the predecessor of the limited liability company referred to in this section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.
 - b. "Official capacity" means:
 - (1) With respect to a governor, the position of governor in a limited liability company;
 - (2) With respect to a person other than a governor, the elective or appointive office or position held by a manager, member of a committee of the board of governors, the employment relationship undertaken by an employee, agent of the limited liability company, or the scope of the services provided by members of the limited liability company who provide services to the limited liability company; and
 - (3) With respect to a governor, manager, member, employee, or agent of the limited liability company who, while a governor, manager, member, or employee of the limited liability company, is or was serving at the request of the limited liability company or whose duties in that position involve or involved service as a governor, director, manager, officer, member, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a governor, director, manager, officer, member, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.
 - c. "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the limited liability company.
 - d. "Special legal counsel" means counsel who has not represented the limited liability company or a related organization, or a governor, manager, member of a committee of the board of governors, employee, or agent whose indemnification is in issue.
2. Subject to the provisions of subsection 5, a limited liability company shall indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney's fees and disbursements, incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the person:
 - a. Has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney's fees and disbursements, incurred by

- the person in connection with the proceeding with respect to the same acts or omissions;
- b. Acted in good faith;
 - c. Received no improper personal benefit and section 10-32-87, if applicable, has been satisfied;
 - d. In the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and
 - e. In the case of acts or omissions occurring in the official capacity described in paragraph 1 or 2 of subdivision b of subsection 1, reasonably believed that the conduct was in the best interests of the limited liability company, or in the case of acts or omissions occurring in the official capacity described in paragraph 3 of subdivision b of subsection 1, reasonably believed that the conduct was not opposed to the best interests of the limited liability company. If the person's acts or omissions complained of in the proceeding relate to conduct as a director, officer, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the limited liability company if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.
3. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent does not, of itself, establish that the person did not meet the criteria set forth in subsection 2.
 4. Subject to the provisions of subsection 5, if a person is made or threatened to be made a party to a proceeding, the person is entitled, upon written request to the limited liability company, to payment or reimbursement by the limited liability company of reasonable expenses, including attorney's fees and disbursements, incurred by the person in advance of the final disposition of the proceeding:
 - a. Upon receipt by the limited liability company of a written affirmation by the person of a good faith belief that the criteria for indemnification set forth in subsection 2 have been satisfied and a written undertaking by the person to repay all amounts so paid or reimbursed by the limited liability company, if it is ultimately determined that the criteria for indemnification have not been satisfied; and
 - b. After a determination that the facts then known to those making the determination would not preclude indemnification under this section.

The written undertaking required by subdivision a is an unlimited general obligation of the person making it, but need not be secured and must be accepted without reference to financial ability to make the repayment.

5. The articles of organization or operating agreement either may prohibit indemnification or advances of expenses otherwise required by this section or may impose conditions on indemnification or advances of expenses in addition to the conditions contained in subsections 2 through 4 including, without limitation, monetary limits on indemnification or advances of expenses, if the conditions apply equally to all persons or to all persons within a given class. A prohibition or limit on indemnification or advances may not apply to or affect the right of a person to indemnification or advances of expenses with respect to any acts or omissions of the person occurring before the effective date of a provision in the articles of organization or the date of adoption of a provision in the operating agreement establishing the prohibition or limit on indemnification or advances.
6. This section does not require, or limit the ability of, a limited liability company to reimburse expenses, including attorney's fees and disbursements, incurred by a person in connection with an appearance as a witness in a proceeding at a time when the person has not been made or threatened to be made a party to a proceeding.
7. All indemnification determinations must be made:
 - a. By the board of governors by a majority of a quorum. Governors who are, at the time, parties to the proceeding are not counted for determining either a majority or the presence of a quorum;
 - b. If a quorum under subdivision a cannot be obtained, by a majority of a committee of the board of governors, consisting solely of two or more governors not at the time parties to the proceeding, duly designated to act in the matter by a majority of the full board of governors including governors who are parties;
 - c. If a determination is not made under subdivision a or b, by special legal counsel, selected either by a majority of the board of governors or a committee by vote pursuant to subdivision a or b or, if the requisite quorum of the full board of governors cannot be obtained and the committee cannot be established, by a majority of the full board of governors including governors who are parties;
 - d. If a determination is not made under subdivisions a through c, by the members, ~~excluding the votes of membership interests held by parties~~ other than the members who are a party to the proceeding; or
 - e. If an adverse determination is made under subdivisions a through d or under subsection 8, or if no determination is made under subdivisions a through d or under subsection 8 within sixty days after the ~~termination of a proceeding or after a later to occur of the~~ termination of a proceeding; or a written request for indemnification to the limited liability company; or a written request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place, upon application of the person and any notice the court requires. The person seeking indemnification or payment or reimbursement of expenses pursuant to this clause has the

burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.

8. With respect to a person who is not, and was not at the time of the acts or omissions complained of in the proceedings, a governor, manager, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the limited liability company, the determination whether indemnification of this person is required because the criteria set forth in subsections 2 and 3 have been satisfied and whether this person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 4 may be made by an annually appointed committee of the board of governors, having at least one member who is a governor. The committee shall report at least annually to the board of governors concerning its actions.
9. A limited liability company may purchase and maintain insurance on behalf of a person in that person's official capacity against any liability asserted against and incurred by the person in or arising from that capacity, whether or not the limited liability company would have been required to indemnify the person against the liability under the provisions of this section.
10. A limited liability company that indemnifies or advances expenses to a person in accordance with this section in connection with a proceeding by or on behalf of the limited liability company shall report to the members in writing the amount of the indemnification or advance and to whom and on whose behalf it was paid not later than the next meeting of members as part of the annual financial statements furnished to members pursuant to section 10-32-52 covering the period when the indemnification or advance was paid or accrued under the accounting method of the limited liability company reflected in the financial statements.
11. Nothing in this section may be construed to limit the power of the limited liability company to indemnify other persons by contract or otherwise.

SECTION 166. AMENDMENT. Section 10-32-100 of the North Dakota Century Code is amended and reenacted as follows:

10-32-100. Merger - Exchange - Transfer.

1. With or without a business purpose, a limited liability company may merge:
 - a. With another limited liability company or a domestic corporation pursuant to a plan of merger approved in the manner provided in sections 10-32-101 through 10-32-106; and
 - b. With any foreign corporation or foreign limited liability company pursuant to a plan of merger approved in the manner provided in section 10-32-107.
2. With respect to an exchange:

- a. A limited liability company may acquire all of the ownership interests of one or more classes or series of another limited liability company or domestic corporation pursuant to a plan of exchange approved in the manner provided in sections 10-32-101 through 10-32-106.
- ~~3.~~
 - b. A domestic corporation may acquire all of the ownership interests of one or more classes or series of a limited liability company pursuant to a plan of exchange approved in the manner provided in sections 10-32-101 through 10-32-106.
- ~~4.~~
 - c. A foreign corporation or foreign limited liability company may acquire all of the ownership interests of one or more classes or series of a limited liability company pursuant to a plan of exchange approved in the manner provided in section 10-32-107.
- ~~5.~~
 3. A limited liability company may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the manner provided in section 10-32-108.
- ~~6.~~
 4. A limited liability company may participate in a merger only as permitted by this section.

SECTION 167. AMENDMENT. Section 10-32-101 of the North Dakota Century Code is amended and reenacted as follows:

10-32-101. Plan of merger or exchange.

1. A plan of merger or exchange must contain:
 - a. The name of the limited liability company and of each other constituent organization proposing to merge or participate in an exchange, and:
 - (1) In the case of a merger, the name of the surviving organization, which may be the limited liability company or the other constituent organization; or
 - (2) In the case of an exchange, the name of the acquiring organization;
 - b. The terms and conditions of the proposed merger;
 - c. The manner and basis for converting or exchanging ownership interests:
 - (1) In the case of a merger, the manner and basis of converting the ownership interests of the constituent organizations into securities of the surviving organization or of any other organization or, in whole or in part, into money or other property; or
 - (2) In the case of an exchange, the manner and basis of exchanging the ownership interests to be acquired for securities of the acquiring organization or any other

- organization or, in whole or in part, for money or other property;
- d. In the case of a merger, a statement of any amendments to the articles of organization or articles of incorporation, as the case may be, of the surviving organization proposed as part of the merger; and
 - e. Any other provisions with respect to the proposed merger that are considered necessary or desirable.
2. The procedure authorized by this section does not limit the power of a limited liability company to acquire all or part of the ownership interests of one or more classes or series of any other organization through a negotiated agreement with the owners or otherwise.

SECTION 168. AMENDMENT. Section 10-32-102 of the North Dakota Century Code is amended and reenacted as follows:

10-32-102. Plan approval.

1. A resolution containing the plan of merger must be approved by the affirmative vote of a majority of the board members present at a meeting of the governing board of each constituent organization and must then be submitted at a regular or special meeting to the members owners of each constituent organization at a regular or a special meeting in the case of a plan of merger; and the constituent organization whose ownership interests will be acquired by the acquiring constituent organization in the exchange, in the case of an exchange. Written notice must be given to every owner of that constituent organization, whether or not entitled to vote at the meeting, not less than fourteen days nor more than sixty days before the meeting, in the manner provided in section 10-19.1-98 for notice of meetings of shareholders in the case of a domestic corporation and in the manner provided in section 10-32-40 for notice of meetings of members in the case of a limited liability company. The written notice must state that a purpose of the meeting is to consider the proposed plan of merger or exchange. A copy or short description of the plan of merger or exchange must be included in or enclosed with the notice.
2. At the meeting a vote of the owners must be taken on the proposed plan. The plan of merger is adopted when approved by the affirmative vote of the owners of a majority of the voting power of all ownership interests entitled to vote. Except as provided in subsection 3, a class or series of ownership interests of the constituent organization is entitled to vote as a class or series if any provision of the plan would, if contained in a proposed amendment to the articles of organization or articles of incorporation, as the case may be, entitle the class or series of ownership interests to vote as a class or series and, in the case of an exchange, if the class or series is included in the exchange.
3. A class or series of ownership interests of the constituent organization is not entitled to vote as a class or series solely because the plan of merger ~~or exchange~~ effects a cancellation of the ownership interests of the class or series if the plan of merger ~~or exchange~~ effects a cancellation of all ownership interests of the constituent organization of all classes and

series that are existing immediately before the merger ~~or exchange~~ and owners of ownership interests of that class or series are entitled to obtain payment for the fair value of their ownership interests under section 10-19.1-87 or 10-32-55, as the case may be, in the event of the merger ~~or exchange~~.

4. Notwithstanding subsections 1 and 2, submission of a plan of merger to a vote at a meeting of shareholders of a surviving corporation is not required if:
 - a. The articles of the corporation will not be amended in the transaction;
 - b. Each holder of shares of the corporation that were outstanding immediately before the effective ~~date~~ time of the transaction will hold the same number of shares with identical rights immediately after that ~~date~~ time;
 - c. The ~~number of voting power of the outstanding~~ shares of the corporation entitled to vote immediately after the merger, plus the ~~number of voting power of the outstanding~~ shares of the corporation entitled to vote issuable on conversion of ~~securities other than shares~~ or on the exercise of rights to purchase securities issued ~~by virtue of the terms of~~ in the transaction, will not exceed by more than twenty percent, the ~~number of voting power of the outstanding~~ shares of the corporation entitled to vote immediately before the transaction; and
 - d. The number of participating shares of the corporation immediately after the merger, plus the number of participating shares of the corporation issuable on conversion, or on the exercise of rights to purchase, securities issued in the transaction, will not exceed by more than twenty percent, the number of participating shares of the corporation immediately before the transaction. "Participating shares" are outstanding shares of the corporation that entitle their holders to participate without limitation in distributions by the corporation.

SECTION 169. AMENDMENT. Section 10-32-103 of the North Dakota Century Code is amended and reenacted as follows:

10-32-103. Articles of merger - Certificate.

1. Upon receiving the approval required by section 10-32-102, articles of merger must be prepared that contain:
 - a. The plan of merger; and
 - b. For each constituent organization either:
 - (1) A statement that the plan has been approved by a vote of the shareholders pursuant to subsection 2 of section 10-19.1-98 or the members pursuant to subsection 2 or 3 of section 10-32-102; or

- (2) A statement that a vote of the shareholders is not required by virtue of subsection 3 of section 10-19.1-98 or that a vote of the members is not required by virtue of subsection 4 of section 10-32-102.
2. The articles of merger must be signed on behalf of each constituent organization and filed with the secretary of state, together with the fees provided in section 10-32-150.
3. The secretary of state shall issue a certificate of merger to the surviving constituent organization, or its legal representative. The certificate must contain the effective date of merger.

SECTION 170. AMENDMENT. Section 10-32-104 of the North Dakota Century Code is amended and reenacted as follows:

10-32-104. Merger of subsidiary into parent.

1. A parent owning at least ninety percent of the outstanding ownership interests of each class and series of a subsidiary ~~may merge the subsidiary into itself without a vote of the owners of either constituent organization;~~ directly, or indirectly through related corporations or limited liability companies:
 - a. May merge the subsidiary into itself; or into any other subsidiary at least ninety percent of the outstanding ownership interest of each class and series of which is owned by the parent directly, or indirectly through related corporations or limited liability companies, without a vote of the owners of itself or any subsidiary; or
 - b. May merge itself, or itself and one or more subsidiaries, into one of the subsidiaries under this section.
2. A resolution approved by the affirmative vote of a majority of the directors or ~~managers~~ governors of the parent present must set forth a plan of merger that contains:
 - a. The name of the subsidiary ~~and~~ or subsidiaries, the name of the parent, and the name of the surviving constituent organization; and
 - b. The manner and basis of converting the ownership interests of the subsidiary into ownership interests of the parent or of another organization or, in whole or in part, into money or other property;
 - c. If the parent is a constituent organization but is not the surviving constituent organization in the merger, a provision for the pro rata issuance of ownership interests of the surviving constituent organization to the owners of ownership interests of the parent for ownership interests of the parent; and
 - d. If the surviving constituent organization is a subsidiary, a statement of any amendments to the articles of the surviving constituent organization that will be part of the merger.

3. If the parent is a constituent organization but is not the surviving constituent organization in a merger, the resolution is not effective unless it is also approved by the affirmative vote of the holders of a majority of the voting power of all ownership interests of the parent entitled to vote at a regular or special meeting held in accordance with section 10-19.1-98 if the parent is a corporation or in accordance with the laws under which it is incorporated or organized if the parent is a foreign corporation or foreign limited liability company.
- ~~2.~~ 4. A copy of the plan of merger must be mailed to each ~~member~~ owner, other than the parent, of ~~the~~ each subsidiary that is a constituent organization to the merger.
- ~~3.~~ 5. Articles of merger must be prepared that contain:

 - a. The plan of merger;
 - b. The number of outstanding ownership interests of each class and series of ~~the~~ each subsidiary and the number of ownership interests of each class and series owned by the parent directly or indirectly, through related constituent organizations; and
 - c. The date a copy of the plan of merger was mailed to the owners, other than the parent, of ~~the~~ each subsidiary that is a constituent organization in the merger, and
 - d. A statement that the plan of merger has been approved by the parent under this section.
- ~~4.~~ 6. Within thirty days after a copy of the plan of merger is mailed to the owners of ~~the~~ each subsidiary that is a constituent organization to the merger, or upon waiver of the mailing by the holders owners of all outstanding ownership interests, the articles of merger must be signed on behalf of the parent and filed with the secretary of state, together with the fees provided in section 10-32-150.
- ~~5.~~ 7. The secretary of state shall issue a certificate of merger to the parent or its legal representative. The certificate must contain the effective date of merger.
8. If all of the ownership interests of one or more domestic subsidiaries that are a constituent organization to a merger under this section are not owned by the parent directly, or indirectly through related constituent organizations, immediately before the merger, the owners of each domestic subsidiary have dissenter's rights under section 10-19.1-87 or under section 10-32-54, without regard to subsection 3 of section 10-19.1-87 and section 10-19.1-88 or to subsection 2 of section 10-32-54 or section 10-22-55. If the parent is a constituent organization but is not the surviving constituent organization in the merger, and the articles of incorporation or articles of organization of the surviving constituent organization immediately after the merger differ from the articles of incorporation or articles of organization of the parent immediately before the merger in a manner that would entitle an owner of the parent to dissenter's rights under subsection 1 of section 10-19.1-87 or under subdivision a of subsection 1 of section 10-32-54 if the articles of incorporation or articles of organization of the surviving constituent

organization constitute an amendment to the articles of incorporation or articles of organization of the parent, that owner of the parent has dissenter's rights as provided under sections 10-19.1-87 and 10-19.1-88 or under sections 10-32-54 and 10-32-55. Except as provided in this subsection, sections 10-19.1-87 and 10-19.1-88 and sections 10-32-54 and 10-32-55 do not apply to any merger affected under this section.

9. A merger among a parent and one or more subsidiaries or among two or more subsidiaries of a parent may be accomplished under sections 10-32-101 through 10-32-103 instead of this section, in which case this section does not apply.

SECTION 171. AMENDMENT. Section 10-32-105 of the North Dakota Century Code is amended and reenacted as follows:

10-32-105. Abandonment of plan of merger.

1. After a plan of merger has been approved by the owners entitled to vote on the approval of the plan as provided in section 10-32-102, and before the effective date of the plan, it may be abandoned:
 - a. If the owners of ownership interests of each of the constituent organizations entitled to vote on the approval of the plan as provided in section 10-32-102 have approved the abandonment at a meeting by the affirmative vote of the owners of a majority of the voting power of the ownership interests entitled to vote and, if the owners of a constituent organization are not entitled to vote on the approval of the plan under section 10-32-102, the governing board of that constituent organization has approved the abandonment by the affirmative vote of a majority of the board members present;
 - b. If the plan itself provides for abandonment and all conditions for abandonment set forth in the plan are met; or
 - c. Pursuant to subsection 2.
2. If articles of merger have not been filed with the secretary of state and the plan is to be abandoned, or if a plan of exchange is to be abandoned, a resolution abandoning the plan of merger or exchange may be approved by the affirmative vote of a majority of the board members present, subject to the contract rights of any other person under the plan.
3. If articles of merger have been filed with the secretary of state, but have not yet become effective, the constituent organizations, in the case of abandonment under subdivision a of subsection 1, the constituent organizations or any one of them, in the case of abandonment under subdivision b of subsection 1, or the abandoning organization in the case of abandonment under subsection 2, shall file with the secretary of state together with the fees provided in section 10-32-150, articles of abandonment that contain:
 - a. The names of the constituent organizations;
 - b. The provision of this section under which the plan is abandoned; and

- c. If the plan is abandoned under subsection 2, the text of the resolution approved by the affirmative vote of a majority of the board members present abandoning the plan.
4. If the certificate of merger has been issued, the governing board shall surrender the certificate to the secretary of state upon filing the articles of abandonment.

SECTION 172. AMENDMENT. Section 10-32-106 of the North Dakota Century Code is amended and reenacted as follows:

10-32-106. Effective date of merger or exchange and effect.

1. A merger is effective when the articles of merger are filed with the secretary of state or on a later date specified in the articles of merger. An exchange is effective on the date specified in the plan of exchange.
2. When a merger becomes effective:
 - a. The constituent organizations become a single entity constituent organization, the surviving ~~limited liability company or corporation,~~ as the case may be constituent organization;
 - b. The separate existence of all constituent organizations except the surviving constituent organization ceases;
 - c. As to any limited liability company that was a constituent organization and is not the surviving constituent organization, the articles of merger serve as the articles of termination and, unless previously filed, the notice of dissolution;
 - d. As to rights, privileges, immunities, powers, duties, and liabilities:
 - (1) If the surviving organization is a limited liability company, the surviving limited liability company has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities of a limited liability company organized under this chapter; and
 - (2) If the surviving organization is a domestic corporation, the surviving domestic corporation has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities of a domestic corporation;
 - e. The surviving constituent organization, whether a limited liability company or a domestic or foreign corporation, possesses all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the constituent organizations.
 - (1) All property, real, personal, and mixed, and all debts due on any account, including subscriptions to shares and contribution agreements, as the case may be, and all other choses in action, and every other interest of or belonging to or due to each of the constituent organizations vests in the surviving constituent organization without any further act or deed.

- (2) Confirmatory deeds, assignments, or similar instruments to accomplish that vesting may be signed and delivered at any time in the name of a constituent organization by its current officers or managers, as the case may be, or, if the organization no longer exists, by its last officers or managers, as the case may be.
 - (3) The title to any real estate or any interest in real estate vested in any of the constituent organizations does not revert nor in any way become impaired by reason of the merger;
 - f. The surviving constituent organization is responsible and liable for all the liabilities and obligations of each of the constituent organizations.
 - (1) A claim of or against or a pending proceeding by or against a constituent organization may be prosecuted as if the merger had not taken place, or the surviving organization may be substituted in the place of the constituent organization.
 - (2) Neither the rights of creditors nor any liens upon the property of a constituent organization are impaired by the merger; and
 - g. The articles of organization or articles of incorporation, as the case may be, of the surviving organization are considered to be amended to the extent that changes in its articles, if any, are contained in the plan of merger.
3. When a merger becomes effective, the ownership interests to be converted or exchanged under the terms of the plan cease to exist in the case of a merger, or are considered to be exchanged in the case of an exchange. The owners of those ownership interests are entitled only to the securities, money, or other property into which those ownership interests have been converted or for which those ownership interests have been exchanged in accordance with the plan, subject to any dissenters' rights under section 10-19.1-87 or 10-32-54, as the case may be.

SECTION 173. AMENDMENT. Section 10-32-107 of the North Dakota Century Code is amended and reenacted as follows:

10-32-107. Merger or exchange with foreign ~~organization~~ limited liability company or foreign corporation.

1. A limited liability company may merge with or participate in an exchange with a foreign corporation or a foreign limited liability company by following the procedures set forth in this section, if:
 - a. With respect to a merger, the merger is permitted by the laws of the state under which the foreign corporation or foreign limited liability company is incorporated or organized; and
 - b. With respect to an exchange, the constituent organization whose ownership interests will be acquired is either a limited liability company or a domestic corporation, whether or not the exchange is permitted by the laws of the state under which the foreign

corporation or foreign limited liability company is incorporated or organized.

2. Each limited liability company shall comply with the provisions of this section and sections 10-32-100 through 10-32-106 with respect to the merger or exchange of ownership interests of organizations and each foreign corporation or foreign limited liability company shall comply with the applicable provisions of the laws under which it was incorporated or organized or by which it is governed.
3. If the surviving organization in a merger will be a domestic limited liability company, it shall comply with all the provisions of this chapter.
4. If the surviving organization in a merger will be a foreign corporation or foreign limited liability company and will transact business in this state, it shall comply, as the case may be, with the provisions of chapter 10-22 with respect to foreign corporations or with the provisions of this chapter with respect to foreign limited liability companies. In every case the surviving foreign corporation or foreign limited liability company shall file with the secretary of state:
 - a. An agreement that it may be served with process in this state in a proceeding for the enforcement of an obligation of a constituent organization and in a proceeding for the enforcement of the rights of a dissenting owner of an ownership interest of a constituent organization against the surviving foreign corporation or foreign limited liability company;
 - b. An irrevocable appointment of the secretary of state as its agent to accept service of process in any proceeding, and an address to which process may be forwarded; and
 - c. An agreement that it will promptly pay to the dissenting owners of an ownership interests of each constituent domestic limited liability company and constituent domestic corporation the amount, if any, to which they are entitled under section 10-19.1-88 or 10-32-55, as the case may be.

SECTION 174. AMENDMENT. Section 10-32-108 of the North Dakota Century Code is amended and reenacted as follows:

10-32-108. Transfer of assets - When permitted.

1. A limited liability company may, by affirmative vote of a majority of the governors present, ~~may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business and grant a mortgage of or security interest in and otherwise encumber and assign for purposes of security all or substantially all of its property and assets whether or not in the usual and regular course of its business,~~ upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board of governors considers expedient, ~~in which case no~~ and without member approval is required:

- a. Sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business;
 - b. Grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business; or
 - c. Transfer any or all of its property to a corporation all of the shares of which are owned by a limited liability company.
2. A limited liability company, by affirmative vote of a majority of the governors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets, including its goodwill, not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board of governors considers expedient, when approved at a regular or special meeting of the members by the affirmative vote of the owners of a majority of the voting power of the interests entitled to vote. Written notice of the meeting must be given to all members whether or not they are entitled to vote at the meeting. The written notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the limited liability company.
 3. Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current managers or authorized agents, or, if the limited liability company no longer exists, by its last managers.
 4. The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by this chapter or other statutes of this state.

SECTION 175. AMENDMENT. Section 10-32-109 of the North Dakota Century Code is amended and reenacted as follows:

10-32-109. Methods of dissolution.

1. A limited liability company dissolves upon the occurrence of any of the following events:
 - a. When the period fixed in the articles of organization for the duration of the limited liability company expires;
 - b. By order of a court pursuant to sections 10-32-119 and 10-32-122;
 - c. By action of the organizers pursuant to section 10-32-110;
 - d. By action of the members pursuant to section 10-32-111; ~~or~~
 - e. ~~Upon~~ Except as otherwise provided in the articles of organization, upon the occurrence of an event that terminates the continued

membership of a member in the limited liability company, including:

- (1) Death of any member;
- (2) Retirement of any member;
- (3) Resignation of any member;
- (4) Redemption of a member's complete membership interest;
- (5) Assignment of a member's governance rights under section 10-32-32 which leaves the assignor with no governance rights;
- (6) A buyout of a member's membership interest under section 10-32-119 that leaves that member with no governance rights;
- (7) Expulsion of any member;
- (8) Bankruptcy of any member;
- (9) Dissolution of any member;
- (10) A merger in which the limited liability company is not the surviving organization;
- (11) An exchange in which the limited liability company is not the acquiring organization; or
- (12) The occurrence of any other event that terminates the continued membership of a member in the limited liability company, but the limited liability company is not dissolved and is not required to be wound up by reason of any event that terminates the continued membership of a member if:
 - (a) Either there are at least two remaining members or a new member is admitted as provided in section 10-32-06; and
 - (b) The existence and business of the limited liability company is continued either by the consent of all remaining members under a right to consent stated in the articles of organization and the consent is obtained no later than ninety days after the termination of the continued membership, or under a separate right to continue stated in the articles of organization; or

f. When terminated by the secretary of state pursuant to section 10-32-149.

2. A limited liability company dissolved by one of the dissolution events specified in subsection 1 must be wound up and terminated under the following dissolution provisions:
 - a. When a limited liability company is dissolved under subdivision a of subsection 1 by reason of the expiration of its limited period of

- duration, the limited liability company must be wound up and terminated under sections 10-32-112 through 10-32-115 and sections 10-32-117, 10-32-118, and 10-32-131;
- b. When a limited liability company is dissolved under subdivision b of subsection 1 by reason of a court order, the limited liability company must be wound up and terminated under sections 10-32-119 through 10-32-126;
 - c. When a limited liability company is dissolved under subdivision c of subsection 1 by its organizers, the limited liability company must be wound up and terminated under section 10-32-110 and sections 10-32-112 through 10-32-118;
 - d. When a limited liability company is dissolved under subdivision d of subsection 1 by its members, the limited liability company must be wound up and terminated under sections 10-32-111 through 10-32-118 and section 10-32-131; and
 - e. When a limited liability company is dissolved under subdivision e of subsection 1 by reason of a termination of the continued membership of a member, the limited liability company must be wound up and terminated under sections 10-32-112 through 10-32-115 and sections 10-32-117, 10-32-118, and 10-32-131.
3. Notwithstanding any provision of law, articles of organization, member-control agreement, operating agreement, other agreement, resolution, or action to the contrary, a limited liability company is not dissolved and is not required to be wound up upon the granting of a security interest in a member's membership interest, governance rights or financial rights, or upon the foreclosure or other enforcement of a security interest in a member's financial rights, or upon the secured party's assignment, acceptance, or retention of a member's financial rights in accordance with title 41.

SECTION 176. AMENDMENT. Section 10-32-110 of the North Dakota Century Code is amended and reenacted as follows:

10-32-110. Voluntary dissolution and termination by organizers. A limited liability company that has not accepted contributions may be dissolved and terminated by the organizers in the manner set forth in this section.

1. A majority of the organizers or governors shall sign articles of dissolution and termination containing:
 - a. The name of the limited liability company;
 - b. The date of organization;
 - c. A statement that contributions have not been accepted; and
 - d. A statement that no debts remain unpaid.
2. The articles of dissolution and termination must be filed with the secretary of state together with the fees provided in section 10-32-150.

3. When the articles of dissolution and termination have been filed with the secretary of state, the limited liability company is terminated.
4. The secretary of state shall issue to the terminated limited liability company or its legal representative a certificate of termination that contains:
 - a. The name of the limited liability company;
 - b. The date the articles of dissolution and termination were filed with the secretary of state; and
 - c. A statement that the limited liability company is terminated.

SECTION 177. AMENDMENT. Section 10-32-113 of the North Dakota Century Code is amended and reenacted as follows:

10-32-113. Procedure in winding up.

1. If the business of the limited liability company is wound up and terminated by merging the dissolved limited liability company into a successor organization:
 - a. The procedures stated in sections 10-32-100 through 10-32-107 must be followed;
 - b. Sections 10-32-114 through 10-32-116 and sections 10-32-128 and 10-32-129 do not apply; and
 - c. Once the merger is effective, a creditor or claimant of the terminated limited liability company, and all those claiming through or under the creditor or claimant, are barred from suing the terminated limited liability company on that claim or otherwise realizing upon or enforcing it against the terminated limited liability company, but the creditor, claimant, and those claiming under the creditor and claimant, may, if not otherwise barred by law, assert their claims against the surviving organization of the merger.
2. If the business of the limited liability company is to be wound up and terminated other than by merging the dissolved limited liability company into a successor organization, the procedures stated in subsections 3 through 5 must be followed.
3. When a notice of dissolution has been filed with the secretary of state, the board of governors, or the managers acting under the direction of the board of governors, shall proceed as soon as possible:
 - a. To give notice to creditors and claimants under section 10-32-114 or to proceed under section 10-32-115;
 - b. Subject to any business continuation agreement, to collect or make provision for the collection of all known debts due or owing to the limited liability company, including unperformed contribution agreements; and

- c. Except as provided in sections 10-32-114, 10-32-115, and 10-32-128, to pay or make provision for the payment of all known debts, obligations, and liabilities of the limited liability company according to their priorities under section 10-32-131.
4. Notwithstanding section 10-32-108, when a notice of dissolution has been filed with the secretary of state, the governors may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of a dissolved limited liability company without a vote of the members.
5. All tangible or intangible property, including money, remaining after the discharge of, or after making adequate provision for the discharge of, the debts, obligations, and liabilities of the limited liability company must be distributed to the members in accordance with section 10-32-131.

SECTION 178. AMENDMENT. Section 10-32-114 of the North Dakota Century Code is amended and reenacted as follows:

10-32-114. Winding-up procedure for limited liability companies that give notice to creditors and claimants.

4. When a notice of dissolution has been filed with the secretary of state, and the business of the limited liability company is not to be wound up and terminated by merging the dissolved limited liability company into a successor organization under subsection 3 of section 10-32-112, then the limited liability company may give notice of the filing to each creditor of and claimant against the limited liability company known or unknown, present or future, and contingent or noncontingent.
1. If notice to creditors and claimants is given, it must be given by publishing the notice once each week for four successive weeks in an official newspaper as defined in chapter 46-06 in the county or counties where the registered office and the principal executive office of the limited liability company are located and by giving written notice to known creditors and claimants pursuant to subsection 32 of section 10-32-02.
2. The notice to creditors and claimants must contain:
 - a. A statement that the limited liability company has dissolved and is in the process of winding up its affairs;
 - b. A statement that the limited liability company has filed with the secretary of state a notice of dissolution;
 - c. The date of filing the notice of dissolution;
 - d. The address of the office to which written claims against the limited liability company must be presented; and
 - e. The date by which all claims must be received, which must be the later of ninety days after published notice or, with respect to a particular known creditor or claimant, ninety days after the date on which written notice was given to that creditor or claimant.

Published notice is considered given on the date of first publication for the purpose of determining this date.

3. If the business of the limited liability company is being continued under a business continuation agreement, the notice to creditors may also contain all of the following:
 - a. A statement that the business of the dissolved limited liability company is being continued by a successor organization;
 - b. The name and address of the successor organization;
 - c. An undertaking by the successor organization to assume all the liabilities of the dissolved limited liability company; and
 - d. A statement that creditors of the dissolved limited liability company do not need to file claims against the limited liability company in order to preserve their rights to enforce those claims against the successor organization.

Neither the existence of a business continuation agreement nor the giving of the information described in this subsection affects a creditor's or claimant's right to proceed against the dissolved limited liability company.

4. With respect to a limited liability company that gives notice to creditors and claimants:
 - a. ~~A~~ The limited liability company ~~that gives notice to creditors and claimants~~ has thirty days from the receipt of each claim filed according to the procedures set forth by the limited liability company on or before the date set forth in the notice to accept or reject the claim by giving written notice to the person submitting it. A claim not expressly rejected in this manner is considered accepted.
 - b. A creditor or claimant to whom notice is given and whose claim is rejected by the limited liability company has sixty days from the date of rejection, or one hundred eighty days from the date the limited liability company filed with the secretary of state the notice of dissolution, whichever is longer, to pursue any other remedies with respect to the claim.
 - c. A creditor or claimant to whom notice is given who fails to file a claim according to the procedures set forth by the limited liability company on or before the date set forth in the notice is barred from suing the dissolved limited liability company on that claim or otherwise realizing upon or enforcing it against the dissolved limited liability company, except as provided in section 10-32-128. If the dissolved limited liability company gave the additional information referred to in subsection 3, nothing in this section bars the creditor or claimant from seeking to enforce its rights against the successor organization.
 - d. A creditor or claimant whose claim is rejected by the limited liability company under subdivision b is barred from suing on that

claim or otherwise realizing upon or enforcing it whether against the dissolved limited liability company or any successor organization, if the creditor or claimant does not initiate legal, administrative, or arbitration proceedings with respect to the claim within the time provided in subdivision b.

5. Articles of termination for a limited liability company dissolving under this section that has given notice to creditors and claimants under this section must be filed with the secretary of state along with the fees provided in section 10-32-150 after:
 - a. The ninety-day period in subdivision e of subsection 2 has expired and the payment of claims of all creditors and claimants filing a claim within that period has been made or provided for; or
 - b. The longest of the periods described in subdivision b of subsection 4 has expired and there are no pending legal, administrative, or arbitration proceedings by or against the limited liability company commenced within the time provided in subdivision b of subsection 4.
6. The articles of termination for a limited liability company that has given notice to creditors and claimants under this section must state:
 - a. The last date on which the notice was given and that the payment of all creditors and claimants filing a claim within the ninety-day period in subdivision e of subsection 2 has been made or provided for, or the date on which the longest of the periods described in subdivision b of subsection 4 expired;
 - b. That the remaining property, assets, and claims of the limited liability company have been distributed in accordance with section 10-32-131, or that adequate provision has been made for that distribution; and
 - c. That there are no pending legal, administrative, or arbitration proceedings by or against the limited liability company commenced within the time provided in subdivision b of subsection 4 or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

SECTION 179. AMENDMENT. Section 10-32-115 of the North Dakota Century Code is amended and reenacted as follows:

10-32-115. Winding-up procedure for limited liability companies that do not give notice to creditors and claimants. When a notice of intent to dissolve has been filed with the secretary of state and the limited liability company elected not to give notice to creditors and claimants in the manner provided in section 10-32-114:

1. Articles of termination for a limited liability company whose business is not to be wound up and terminated by merging the dissolved limited liability company into a successor organization under subsection 3 of section 10-32-112 and that has not given notice to creditors and claimants in the manner provided in section 10-32-114 must be filed with the secretary of state after:

- a. The payment of claims of all known creditors and claimants has been made or provided for; or
 - b. At least two years have elapsed from the date of filing the notice of dissolution.
2. The articles of termination for a limited liability company that has not given notice to creditors and claimants in the manner provided under section 10-32-114 must state:
- a. If articles of termination are being filed pursuant to subdivision a of subsection 1 that all known debts, obligations, and liabilities of the limited liability company have been paid and discharged or that adequate provision has been made for payment or discharge;
 - b. That the remaining property, assets, and claims of the limited liability company have been distributed in accordance with section 10-32-131 or that adequate provision has been made for that distribution; and
 - c. That there are no pending legal, administrative, or arbitration proceedings by or against the limited liability company or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.
3. If the limited liability company has paid or provided for all known creditors or claimants at the time articles of termination are filed, a creditor or claimant who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of dissolution is barred from suing on that claim or otherwise realizing upon or enforcing it.
4. If the limited liability company has not paid or provided for all known creditors and claimants at the time articles of termination are filed, a person who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of dissolution is barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in section 10-32-128.

SECTION 180. AMENDMENT. Section 10-32-117 of the North Dakota Century Code is amended and reenacted as follows:

10-32-117. Filing of article of termination - Effective date of termination and certificate - Certificate of termination.

1. An original of the articles of termination must be filed with the secretary of state. If the secretary of state finds the articles of termination conform to the filing requirements of the chapter and all fees have been paid under section 10-32-150, the secretary of state shall issue a certificate of termination.
2. When the articles of termination have been filed with the secretary of state, the limited liability company is terminated.

- ~~2.~~ 3. The secretary of state shall issue to the dissolved limited liability company or its legal representative a certificate of termination that contains:
- a. The name of the limited liability company;
 - b. The date the articles of termination were filed with the secretary of state; and
 - c. A statement that the limited liability company is terminated.

SECTION 181. AMENDMENT. Section 10-32-119 of the North Dakota Century Code is amended and reenacted as follows:

10-32-119. Judicial intervention and equitable remedies, dissolution, and termination.

1. A court may grant any equitable relief it considers just and reasonable in the circumstances or may dissolve, wind up, and terminate a limited liability company:
 - a. In a supervised voluntary winding up and termination pursuant to section 10-32-118;
 - b. In an action by a member when it is established that:
 - (1) The governors or the persons having the authority otherwise vested in the board of governors are deadlocked in the management of the affairs of the limited liability company and the members are unable to break the deadlock;
 - (2) The governors or those in control of the limited liability company have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members in their capacities as members, or governors, of any limited liability company or as managers, or employees of a closely held limited liability company;
 - (3) The members of the limited liability company are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to governors whose terms have expired or would have expired upon the election and qualification of their successors;
 - (4) The limited liability company assets are being misapplied or wasted; or
 - (5) An event of dissolution has occurred under subdivision a, d, or e of subsection 1 of section 10-32-109 but the limited liability company is not acting to wind up its affairs;
 - c. In an action by a creditor when:

- (1) The claim of the creditor has been reduced to judgment and an execution on the judgment has been returned unsatisfied; or
 - (2) The limited liability company has admitted in writing that the claim of the creditor is due and owing and it is established that the limited liability company is unable to pay its debts in the ordinary course of business; or
- d. In an action by the attorney general to dissolve the limited liability company in accordance with section 10-32-122 when it is established that a decree of termination is appropriate.
2. In determining whether to order relief under this section and in determining what particular relief to order, the court shall take into consideration the financial condition of the limited liability company but may not refuse to order any particular form of relief solely on the grounds that the limited liability company has accumulated or current operating profits.
3. In determining whether to order relief under this section and in determining what particular relief to order, the court shall take into consideration the duty that all members in a closely held limited liability company owe one another to act in an honest, fair, and reasonable manner in the operation of the limited liability company and the reasonable expectations of the members as they exist at the inception and develop during the course of the members' relationship with the limited liability company and with each other.
4. For purposes of this section, any written agreements, including employment agreements and buy-sell agreements between or among one or more members and the limited liability company are presumed to reflect the parties reasonable expectations concerning matters dealt with in the agreements.
5. In determining what relief to order, the court shall take into account that any relief that results in the termination of a member's membership interest will cause dissolution of the limited liability company. If the court orders relief that results in dissolution of the limited liability company, the court shall make appropriate orders providing for the winding up and termination of the dissolved limited liability company.
- ~~5.~~ 6. In deciding whether to order winding up through liquidation, the court shall consider whether lesser relief suggested by one or more parties, or provided in a business continuation agreement, such as any form of equitable relief, or a buyout or partial liquidation coupled with the continuation of the business of the dissolved limited liability company through a successor organization, would be adequate to permanently relieve the circumstances established under subdivision b or c of subsection 1. Lesser relief may be ordered in any case where it would be appropriate under all the facts and circumstances of the case.
- ~~6.~~ 7. If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including attorneys' fees and disbursements, to any of the other parties.

7. 8. Proceedings under this section must be brought in a court within the county in which the registered office of the limited liability company is located. It is not necessary to make members parties to the action or proceeding unless relief is sought against them personally.

SECTION 182. AMENDMENT. Section 10-32-121 of the North Dakota Century Code is amended and reenacted as follows:

10-32-121. Qualifications of receivers and powers.

1. A receiver must be an individual or a domestic or foreign organization authorized to transact business or conduct activities in this state. A receiver shall give bond as directed by the court with the sureties required by the court.
2. A receiver may sue and defend in all courts as receiver of the limited liability company. The court appointing the receiver has exclusive jurisdiction of the limited liability company and its property.

SECTION 183. AMENDMENT. Section 10-32-122 of the North Dakota Century Code is amended and reenacted as follows:

10-32-122. Action by attorney general.

1. A limited liability company may be involuntarily dissolved, wound up, and terminated by a decree of a court in this state in an action filed by the attorney general when it is established that:
 - a. The articles of organization were procured through fraud;
 - b. The limited liability company was organized for a purpose not permitted by section 10-32-04;
 - c. The limited liability company failed to comply with the requirements essential to organization under this chapter;
 - d. The limited liability company has failed for thirty days to appoint and maintain a registered agent in this state; ~~or~~
 - e. The limited liability company has failed for thirty days after change of the registered office or registered agent to file in the office of the secretary of state a statement of such change; or
 - f. The limited liability company has acted, or failed to act, in a manner that constitutes surrender or abandonment of the limited liability company privileges or enterprise.
2. An action must not be commenced under this section until thirty days after notice to the limited liability company by the attorney general of the reason for the filing of the action. If the reason for filing the action is an act that the limited liability company has done, or omitted to do, and the act or omission may be corrected by an amendment of the articles of organization or the operating agreement or by performance of or abstention from the act, the attorney general shall give the limited liability company thirty additional days in which to effect the correction before filing the action.

SECTION 184. AMENDMENT. Section 10-32-127 of the North Dakota Century Code is amended and reenacted as follows:

10-32-127. Deposit with ~~state treasurer~~ administrator of abandoned property of amount due certain ~~members~~ persons. Upon termination of a limited liability company, the portion of the assets distributable to a ~~member~~ person who is unknown or cannot be found, or who is under disability, if there is no person legally competent to receive ~~the distributive portion~~ it, must be reduced to money and deposited with the ~~state treasurer~~ administrator of abandoned property for disposition pursuant to chapter 47-30.1. The amount deposited is appropriated to the ~~state treasurer~~ administrator of abandoned property and must be paid over to the ~~member~~ person or a legal representative, upon proof satisfactory to the ~~state treasurer~~ administrator of abandoned property of a right to payment.

SECTION 185. Section 10-32-130.1 of the North Dakota Century Code is created and enacted as follows:

10-32-130.1. Extension after duration expired.

1. A limited liability company whose period of duration as provided in the articles has expired and which has continued to do business despite that expiration may reinstate its articles and extend the period of duration within one year after the date of expiration by filing an amendment to the articles as set forth in this section.
2. An amendment to the articles must be approved by the board of governors and must include:
 - a. The date the period of duration expired under the articles;
 - b. The date to which the period of duration is extended; and
 - c. A statement that the limited liability company has been in continuous operation since before the date of expiration of its original period of duration.
3. The amendment to the articles must be presented, after notice, at a meeting of the members. The amendment is adopted when approved by the members pursuant to section 10-32-16.
4. Articles of amendment, together with any fees and delinquent filings and reports, conforming to section 10-32-18 must be filed with the secretary of state.

SECTION 186. Section 10-32-130.2 of the North Dakota Century Code is created and enacted as follows:

10-32-130.2. Effect of extension. Filing with the secretary of state of articles of amendment extending the period of duration of a limited liability company:

1. Relates back to the date of expiration of the original period of duration of the limited liability company as provided in the articles;
2. Validates contracts or other acts within the authority of the articles, and the limited liability company is liable for those contracts or acts; and

3. Restores to the limited liability company all the assets and rights of the limited liability company to the extent they were held by the limited liability company before expiration of its original period of duration, except those sold or otherwise distributed after that time.

SECTION 187. AMENDMENT. Section 10-32-135 of the North Dakota Century Code is amended and reenacted as follows:

10-32-135. Foreign limited liability company - Governing law.

1. Subject to the constitution of this state, the laws of the jurisdiction under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its members. A foreign limited liability company may not be denied a certificate of authority to transact business in this state by reason of any difference between those laws and the laws of this state.
2. A foreign limited liability company holding a valid certificate of authority in this state has no greater rights and privileges than a domestic limited liability company. The certificate of authority does not authorize the foreign limited liability company to exercise any of its powers or purposes that a domestic limited liability company is forbidden by law to exercise in this state.

SECTION 188. AMENDMENT. Section 10-32-136 of the North Dakota Century Code is amended and reenacted as follows:

10-32-136. Foreign limited liability company - Name. A foreign limited liability company may apply for a certificate of authority under any name that would be available to a domestic limited liability company, whether or not the name is the name under which it is authorized in its jurisdiction of organization. A trade name must be registered as provided in chapter 47-25 when applying for the certificate of authority under a name other than the name as authorized in the jurisdiction of origin.

SECTION 189. AMENDMENT. Section 10-32-137 of the North Dakota Century Code is amended and reenacted as follows:

10-32-137. Foreign limited liability company - Admission of foreign limited liability company - Transacting business and obtaining - Obtaining licenses and permits. ~~No~~ A foreign limited liability company may ~~transact~~ not:

1. Transact business in this state or obtain any license or permit required by this state until it has procured a certificate of authority from the secretary of state. ~~No foreign limited liability company may transact~~
2. Transact in this state any business that is prohibited to a domestic limited liability company organized under this chapter. ~~A foreign limited liability company may not be~~
3. Be denied a certificate of authority because the laws of the state or country where the limited liability company is organized differ from the laws of this state. ~~Nothing in this chapter authorizes this state to regulate the organization or internal affairs of a foreign limited liability company.~~

SECTION 190. AMENDMENT. Section 10-32-138 of the North Dakota Century Code is amended and reenacted as follows:

10-32-138. Foreign limited liability company - Application for certificate of authority.

1. An applicant for the certificate shall file with the secretary of state a certificate of status from the filing office in the jurisdiction in which the foreign limited liability company is organized and an application executed by an authorized person and setting forth:
 - a. The name of the foreign limited liability company and, if different, the name under which it proposes to transact business in this state;
 - b. The jurisdiction of its organization;
 - c. The name ~~and business address~~ of the proposed registered agent in this state, which agent must be ~~an individual resident of this state, a domestic corporation, or a foreign corporation having a place of business in, and authorized to do business in, this state as defined in section 10-32-12;~~
 - d. The address of the ~~principal executive~~ proposed registered office of the foreign limited liability company in this state; ~~and~~
 - e. The date the foreign limited liability company expires in the jurisdiction of its organization;
 - f. The purpose the foreign limited liability company proposes to pursue in transacting its business in this state;
 - g. The names and addresses of the governors and managers of the foreign limited liability company; and
 - h. Any additional information deemed appropriate by the secretary of state to determine whether the foreign limited liability company is entitled to a certificate of authority to transact business in this state.
2. The application must be accompanied by payment of the fees provided in section 10-32-150 together with a certificate of good standing or a certificate of existence duly authenticated by the organizing officer of the state or country where the limited liability company is organized and the consent of the designated registered agent for service of process to serve in that capacity.

SECTION 191. AMENDMENT. Section 10-32-139 of the North Dakota Century Code is amended and reenacted as follows:

10-32-139. Foreign limited liability company - Issuance of certificate of authority. If the secretary of state finds that an application for a certificate of authority conforms to law and all fees have been paid, the secretary shall:

1. Endorse on the application the word "filed" and the date of the filing;
2. File the application, the certificate of good standing or certificate of existence, and the consent of the registered agent; and

3. Issue to the limited liability company or its representative, a certificate of authority to transact business in this state.

SECTION 192. AMENDMENT. Section 10-32-140 of the North Dakota Century Code is amended and reenacted as follows:

10-32-140. Foreign limited liability company - Amendments to the certificate of authority. If any statement in the application for a certificate of authority by a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited liability company shall promptly file with the secretary of state an application for an amended certificate of authority executed by an authorized person correcting the statement and in the case of a change in its name, a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability company is organized. In the case of a termination or merger, a foreign limited liability company that is not the surviving organization need not file an application for an amended certificate of authority but shall promptly file with the secretary of state a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability company is organized.

SECTION 193. AMENDMENT. Section 10-32-141 of the North Dakota Century Code is amended and reenacted as follows:

10-32-141. Foreign limited liability company - Registered agent and certain reports. A foreign limited liability company authorized to transact business in this state shall:

1. Appoint and continuously maintain a registered agent in the same manner as provided in section 10-32-12; ~~or~~ and
2. File a report upon any change in the ~~name or business~~ address of ~~its~~ the registered agent ~~office~~ or upon any change in the name of its registered agent in the same manner as provided in subsection 3 of section 10-32-13.

SECTION 194. AMENDMENT. Section 10-32-142 of the North Dakota Century Code is amended and reenacted as follows:

10-32-142. Foreign limited liability company - Merger of foreign limited liability company authorized to transact business in this state. Whenever a foreign limited liability company authorized to transact business in this state is a party to a statutory merger permitted by the laws of the state or country under which it is organized, and the limited liability company is not the surviving organization, the surviving organization shall, within thirty days after the merger becomes effective, file with the secretary of state a certified statement of merger duly authenticated by the proper officer of the state or country where the statutory merger was effected. ~~It is not necessary for any~~ Any foreign organization, which is the surviving organization in a merger and which will continue to transact business in this state, ~~to shall~~ procure either a new or amended certificate of authority ~~to transact business in this state unless the name of the organization is changed thereby or unless the organization desires to pursue in this state purposes other than those which it is authorized to transact in this state.~~

SECTION 195. AMENDMENT. Section 10-32-143 of the North Dakota Century Code is amended and reenacted as follows:

10-32-143. Foreign limited liability company - Certificate of withdrawal.

1. A foreign limited liability company authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure the certificate, the foreign limited liability company shall file with the secretary of state an application for withdrawal, together with the fees provided in section 10-32-150, which must set forth:
 - a. The name of the limited liability company and the state or country under the laws of which it is organized;
 - b. That the limited liability company is not transacting business in this state;
 - c. That the limited liability company surrenders its authority to transact business in this state;
 - d. That the limited liability company revokes the authority of its registered agent in this state to accept service of process and consents to that service of process on the limited liability company by service upon the secretary of state in any action, suit, or proceeding based upon any cause of action arising in this state during the time the limited liability company was authorized to transact business in this state; and
 - e. A post-office address to which a person may mail a copy of any process against the limited liability company.
2. The filing with the secretary of state of a certificate of termination, or a certificate of merger if the limited liability company is not the surviving organization, from the proper officer of the state or country under the laws of which the limited liability company is organized constitutes a valid application of withdrawal and the authority of the limited liability company to transact business in this state shall cease upon filing of the certificate.

SECTION 196. AMENDMENT. Section 10-32-144 of the North Dakota Century Code is amended and reenacted as follows:

10-32-144. Foreign limited liability company - Revocation of certificate of authority.

1. The certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the secretary of state upon the occurrence of either of these events:
 - a. The foreign limited liability company has failed to appoint and maintain a registered agent as required by this chapter, file a report upon any change in the name or business address of the registered agent, or file in the office of the secretary of state any amendment to its application for a certificate of authority as specified in section 10-32-140; or

- b. A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by the foreign limited liability company pursuant to this chapter.
2. No certificate of authority of a foreign limited liability company may be revoked by the secretary of state unless:
 - a. The secretary has given the foreign limited liability company not less than sixty days' notice by mail addressed to its registered office in this state or, if the foreign limited liability company fails to appoint and maintain a registered agent in this state, addressed to its principal executive office; and
 - b. During the sixty-day period, the foreign limited liability company has failed to file the report of change regarding the registered agent, to file any amendment, or to correct the misrepresentation.
3. Upon the expiration of sixty days after the mailing of the notice, the authority of the foreign limited liability company to transact business in this state ceases. The secretary of state shall issue a certificate of revocation and shall mail the certificate to the principal executive office of the foreign limited liability company.

SECTION 197. AMENDMENT. Section 10-32-145 of the North Dakota Century Code is amended and reenacted as follows:

10-32-145. Foreign limited liability company - Transaction of business without certificate of authority.

1. A foreign limited liability company transacting business in this state may not maintain any action, suit, or proceeding in any court of this state until it possesses a certificate of authority.
2. The failure of a foreign limited liability company to obtain a certificate of authority does not impair the validity of any contract or act of the foreign limited liability company or prevent the foreign limited liability company from defending any action, suit, or proceeding in any court of this state.
3. A foreign limited liability company, by transacting business in this state without a certificate of authority, appoints the secretary of state as its agent upon whom any notice, process, or demand may be served.
4. A foreign limited liability company that transacts business in this state without a valid certificate of authority is liable to the state for the years or parts of years during which it transacted business in this state without the certificate in an amount equal to all fees that would have been imposed by this chapter upon that limited liability company had it duly obtained the certificate, filed all reports required by this chapter, and paid all penalties imposed by this chapter. The attorney general shall bring proceedings to recover all amounts due this state under the provisions of this section.
5. A foreign limited liability company that transacts business in this state without a valid certificate of authority is subject to a civil penalty, payable to the state, not to exceed five thousand dollars. Each governor

or, in the absence of governors, each member or agent who authorizes, directs, or participates in the transaction of business in this state on behalf of a foreign limited liability company that does not have a certificate is subject to a civil penalty, payable to the state, not to exceed one thousand dollars.

6. The civil penalties set forth in subsection 5 may be recovered in an action brought within the district court of Burleigh County by the attorney general. Upon a finding by the court that a foreign limited liability company or any of its members, governors, or agents have transacted business in this state in violation of this chapter, the court shall issue, in addition to the imposition of a civil penalty, an injunction restraining the further transaction of the business of the foreign limited liability company and the further exercise of any limited liability company's rights and privileges in this state. The foreign limited liability company must be enjoined from transacting business in this state until all civil penalties plus any interest and court costs that the court may assess have been paid and until the foreign limited liability company has otherwise complied with the provisions of this chapter.
7. A member of a foreign limited liability company is not liable for the debts and obligations of the limited liability company solely by reason of the company's having transacted business in this state without a valid certificate of authority.

SECTION 198. AMENDMENT. Section 10-32-146 of the North Dakota Century Code is amended and reenacted as follows:

10-32-146. Foreign limited liability company - Transactions not constituting transacting business.

1. The following activities of a foreign limited liability company, among others, do not constitute transacting business within the meaning of this chapter:
 - a. Maintaining, defending, or settling any proceeding;
 - b. Holding meetings of its members or carrying on any other activities concerning its internal affairs;
 - c. Maintaining bank accounts;
 - d. Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability company's own securities or maintaining trustees or depositories with respect to those securities;
 - e. Selling through independent contractors;
 - f. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
 - g. Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

- h. Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
 - i. Holding, protecting, renting, maintaining, and operating real or personal property in this state so acquired;
 - j. Selling or transferring title to property in this state to any person; or
 - k. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like manner.
 2. The term "transacting business" as used in this section has no effect on personal jurisdiction under the North Dakota Rules of Civil Procedure.
 3. For purposes of this section, any foreign limited liability company that owns income-producing real or tangible personal property in this state, other than property exempted under subsection 1, will be considered transacting business in this state.
 4. The list of activities in subsection 1 is not exhaustive. This section does not apply in determining the contracts or activities that may subject a foreign limited liability company to service of process or taxation in this state or to regulation under any other law of this state.

SECTION 199. AMENDMENT. Section 10-32-147 of the North Dakota Century Code is amended and reenacted as follows:

10-32-147. Foreign limited liability company - Action by attorney general. The attorney general may bring an action to restrain a foreign limited liability company from transacting business in this state in violation of this chapter.

SECTION 200. AMENDMENT. Section 10-32-148 of the North Dakota Century Code is amended and reenacted as follows:

10-32-148. Service of process on a foreign limited liability company. Service of process on a foreign limited liability company must be as provided in section 10-32-132. When the certificate of authority of a foreign limited liability company is suspended or revoked, the secretary of state is an agent of the foreign limited liability company for service of process, notice, or demand.

SECTION 201. AMENDMENT. Section 10-32-149 of the North Dakota Century Code is amended and reenacted as follows:

10-32-149. Secretary of state - Annual report of limited liability company and foreign limited liability company.

1. Each limited liability company, and each foreign limited liability company authorized to transact business in this state, shall file, within the time prescribed by subsection 3, an annual report setting forth:
 - a. The name of the limited liability company or foreign limited liability company and the state or country under the laws of which it is organized.

- b. The address of the registered office of the limited liability company or foreign limited liability company in this state, the name of its registered agent in this state at that address, and the address of its principal executive office.
 - c. A brief statement of the character of the business in which the limited liability company or foreign limited liability company is actually engaged in this state.
 - d. The names and respective addresses of the managers and governors of the limited liability company or foreign limited liability company or the name or names and respective address or addresses of at least two the managing member or members of the limited liability company or foreign limited liability company.
2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as prescribed in subsection 46 of section 10-32-02, ~~or~~ if the articles, operating agreement, or a resolution approved by the affirmative vote of the required proportion or number of the governors or members entitled to vote. If the limited liability company or foreign limited liability company is in the hands of a receiver or trustee, it must be signed on behalf of the limited liability company or foreign limited liability company by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.
 3. The annual report of a limited liability company or foreign limited liability company must be delivered to the secretary of state before November sixteenth of each year, except that the first annual report of a limited liability company or foreign limited liability company must be delivered before November sixteenth of the year following the calendar year in which the certificate of organization or certificate of authority was issued by the secretary of state.
 - a. An annual report in a sealed envelope postmarked by the United States postal service before November sixteenth, or an annual report in a sealed packet with a verified shipment date by any other carrier service before November sixteenth, is in compliance with this requirement.
 - b. The secretary of state must file the report if the report conforms to the requirements of subsection 2.
 - (1) If the report does not conform, it must be returned to the limited liability company or foreign limited liability company for any necessary corrections.
 - (2) If the report is filed before the deadlines prescribed in this subsection, penalties for the failure to file a report within the time provided do not apply; if a the report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction.

- c. The secretary of state may extend the annual filing date of any limited liability company or foreign limited liability company, if a written application for an extension is delivered before November sixteenth.
4. ~~Each limited liability company or foreign limited liability company that fails or refuses to file its annual report for any year within the time prescribed by subsection 3 must pay an additional fee of fifty dollars. A limited liability company that fails to file its annual report, along with the statutory filing and penalty fees, within six months after November fifteenth, ceases to exist and is considered involuntarily terminated by operation of law. The secretary of state shall revoke the certificate of authority to transact business of any foreign limited liability company which fails to file its annual report, along with the statutory filing and penalty fees within six months after November fifteenth. The secretary of state's determination that a certificate of authority must be revoked under this section is final.~~
- ~~5.~~ After the date established under subsection 3, the secretary of state shall notify any limited liability company or foreign limited liability company failing to file its annual report that its certificate of organization or certificate of authority is not in good standing and that it may be terminated or revoked pursuant to subsection 4 5.
- a. The secretary of state must mail notice of termination or revocation to the last registered agent at the last registered office of record.
- b. If the limited liability company or foreign limited liability company files its annual report after the notice is mailed, together with the annual report filing fee and late filing penalty fee as prescribed by section 10-32-150 and the late filing penalty fee as prescribed by subsection 4, the secretary of state will restore its certificate of organization or certificate of authority to good standing.
- ~~6.~~ 5. A limited liability company that does not file its annual report, along with the statutory filing and penalty fees, within six months after the date established in subsection 3, ceases to exist and is considered involuntarily terminated by operation of law.
- a. The secretary of state shall note the termination of the limited liability company's certificate of organization on the records of the secretary of state and shall give notice of the action to the terminated limited liability company.
- b. Notice by the secretary of state must be mailed to the foreign limited liability company's last registered agent at the last registered office of record.
- ~~7.~~ 6. A foreign limited liability company that does not file its annual report, along with the statutory filing and penalty fees, within six months after the date established by subsection 3, forfeits its authority to transact business in ~~North Dakota~~ this state.
- a. The secretary of state shall note the revocation of the foreign limited liability company's certificate of authority on the records of the

secretary of state and shall give notice of the action to the foreign limited liability company.

- b. Notice by the secretary of state must be mailed to the foreign limited liability company's last registered agent at the last registered office of record.
 - c. The secretary of state's decision that a certificate of authority must be revoked under this subsection is final.
8. 7. A limited liability company that was terminated for failure to file an annual report, or a foreign limited liability company whose authority was forfeited by failure to file an annual report, may be reinstated by filing a past-due report, together with the statutory filing and penalty fees for an annual report and a ~~one hundred twenty-five dollar fee~~ reinstatement fee as prescribed in section 10-32-150. The fees must be paid and the report filed within one year following ~~November fifteenth for the past-due report~~ the involuntary dissolution or revocation. Reinstatement under this ~~section~~ subsection does not affect the rights or liability for the time from the termination or revocation to the reinstatement.

SECTION 202. AMENDMENT. Section 10-32-150 of the North Dakota Century Code is amended and reenacted as follows:

10-32-150. Secretary of state - Fees and charges.

1. The secretary of state shall charge and collect for:
 - a. Filing articles of organization and issuing a certificate of organization, one hundred twenty-five dollars.
 - b. Filing articles of amendment, fifty dollars.
 - c. Filing restated articles of organization, one hundred twenty-five dollars.
 - d. Filing articles of merger and issuing a certificate of merger, fifty dollars.
 - e. Filing abandonment of merger or exchange, fifty dollars.
 - f. Filing an application to reserve a name, ten dollars.
 - g. Filing a notice of transfer of a reserved name, ten dollars.
 - h. Filing a cancellation of reserved name, ten dollars.
 - i. Filing a consent to use of name, ten dollars.
 - j. Filing a statement of change of address of registered office or change of registered agent or both, ten dollars.
 - k. Filing a statement of change of address of registered office by registered agent, ten dollars for each limited liability company affected by such change.

- l. Filing a registered agent's consent to serve in such capacity, ten dollars.
 - m. Filing a resignation as registered agent, ten dollars.
 - n. Filing a resolution for the establishment of a class or series of membership interest, fifty dollars.
 - o. Filing a notice of dissolution, ten dollars.
 - p. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.
 - q. Filing articles of dissolution and termination, twenty dollars.
 - r. Filing an application of a foreign limited liability company for a certificate of authority to transact business in this state and issuing a certificate of authority, one hundred twenty-five dollars.
 - s. Filing an amendment to the certificate of authority by a foreign limited liability company, fifty dollars.
 - t. Filing a certificate of fact stating a merger of a foreign limited liability company holding a certificate of authority to transact business in this state, twenty dollars.
 - u. Filing an application for withdrawal of a foreign limited liability company and issuing a certificate of withdrawal, twenty dollars.
 - v. Filing an annual report of a limited liability company or foreign limited liability company, fifty dollars; ~~any other statement or report of either, ten dollars.~~ The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:
 - (1) After the date prescribed in subsection 3 of section 10-32-149, fifty dollars; and
 - (2) After the termination of the limited liability company, or the revocation of the certificate of authority of a foreign limited liability company, the reinstatement fee of one hundred twenty-five dollars.
 - w. Filing any process, notice, or demand for service, ~~twenty~~ twenty-five dollars.
 - x. Filing any other statement or report of a limited liability company or foreign limited liability company, ten dollars.
2. The secretary of state shall charge and collect for:
- a. Furnishing a copy of any document, instrument, or paper relating to a limited liability company or a foreign limited liability company, one dollar for every four pages, or fraction thereof.

- b. A certificate certifying a copy or reciting facts related to a limited liability company or a foreign limited liability company, twenty dollars.
- c. Each page of any document or form sent by electronic transmission, one dollar.

SECTION 203. AMENDMENT. Section 10-32-152 of the North Dakota Century Code is amended and reenacted as follows:

10-32-152. Secretary of state - Powers - Enforcement - Appeal.

1. The secretary of state has the power and authority reasonably necessary to efficiently administer this chapter and to perform the duties imposed thereby.
2. The secretary of state may propound to any limited liability company, domestic or foreign, subject to the provisions of this chapter and to any manager or governor thereof, such interrogatories as may be reasonably necessary and proper to ascertain whether such limited liability company has complied with all provisions of this chapter applicable to such limited liability company.
 - a. Such interrogatories must be answered within thirty days after mailing, or within such additional time as must be fixed by the secretary of state. The answers to such interrogatories must be full and complete and must be made in writing and under oath.
 - b. If such interrogatories be directed:
 - (1) To an individual, they must be answered by that individual;
or
 - (2) To a limited liability company, they must be answered by the president, vice president, secretary, or assistant secretary of the limited liability company.
 - c. The secretary of state need not file any document to which such interrogatories relate until such interrogatories have been answered, and not then if the answers disclose that such document is not in conformity with the provisions of this chapter.
 - d. The secretary of state shall certify to the attorney general, for such action as the attorney general may deem appropriate, all interrogatories and answers thereto, which disclose a violation of any of the provisions of this chapter.
 - e. Each manager or governor of a limited liability company, domestic or foreign, who fails or refuses within the time provided by subdivision a of subsection 2 to answer truthfully and fully all interrogatories propounded to that person by the secretary of state is guilty of an infraction.
 - f. Interrogatories propounded by the secretary of state and the answers thereto are not open to public inspection. The secretary of state may not disclose any facts or information obtained from such

interrogatories or answers except insofar as may be permitted by law or insofar as is required for evidence in any criminal proceedings or other action by this state.

3. If the secretary of state rejects any document required by this chapter to be approved by the secretary of state before the same may be filed, then the secretary of state shall, ~~within ten days after receipt of the document,~~ give written notice of the rejection to the person who delivered the document, specifying the reasons for rejection.
 - a. From such rejection such person may appeal to the district court of the county in which the registered office of such limited liability company is, or is proposed to be, situated by filing with the clerk of such court a petition setting forth a copy of the document sought to be filed and a copy of the written rejection of the document by the secretary of state.
 - b. The matter must be tried de novo by the court. The court shall either sustain the action of the secretary of state or direct the secretary of state to take such action as the court may deem proper.
4. If the secretary of state revokes the certificate of authority to transact business in this state of any foreign limited liability company, pursuant to the provisions of section 10-32-144, such foreign limited liability company may appeal to district court of the county where the registered office of such limited liability company in this state is situated by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to transact business in this state and a copy of the notice of revocation given by the secretary of state. The matter must be tried de novo by the court. The court shall either sustain the action of the secretary of state or direct the secretary of state to take such action as the court may deem proper.
5. Appeals from all final orders and judgments entered by the district court under this section in review of any ruling or decision of the secretary of state may be taken as in other civil actions.

SECTION 204. AMENDMENT. Section 10-32-153 of the North Dakota Century Code is amended and reenacted as follows:

10-32-153. Secretary of state - Certificates and certified copies to be received in evidence.

1. All certificates issued by the secretary of state and all copies of documents filed in accordance with this chapter, when certified by the secretary of state, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated.
2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to limited liability companies which would not appear from a certified copy of any of the foregoing documents or certificates, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts stated therein.

SECTION 205. AMENDMENT. Section 10-32-154 of the North Dakota Century Code is amended and reenacted as follows:

10-32-154. Secretary of state - Forms to be furnished by the secretary of state. All reports required by this chapter to be filed in the office of the secretary of state must be made on forms which ~~must be~~ prescribed and furnished by the secretary of state. Forms for all other documents to be filed in the office of the secretary of state ~~must~~ may be furnished by the secretary of state upon request. However, the use of such documents, unless otherwise specifically required by law, is not mandatory.

SECTION 206. AMENDMENT. Section 10-32-155 of the North Dakota Century Code is amended and reenacted as follows:

10-32-155. Miscellaneous - Foreign trade zones.

1. As used in this section, unless the context otherwise requires:
 - a. "Act of Congress" means the Act of Congress approved June 18, 1934, entitled an act to provide for the establishment, operation and maintenance of foreign trade zones and ports of entry of the United States, to expedite and encourage foreign commerce and for other purposes, as amended, and commonly known as the Foreign Trade Zone Act of 1934.
 - b. "Private organization" means a limited liability company authorized under this chapter or corporation authorized under chapter 10-19.1, one of the purposes of which is to establish, operate, and maintain a foreign trade zone by itself or in conjunction with a public corporation.
 - c. "Public corporation" means:
 - (1) This state;
 - (2) Any political subdivision of this state;
 - (3) Any municipality of this state;
 - (4) Any public agency:
 - (a) Of this state;
 - (b) Of any political subdivision of this state; or
 - (c) Any municipality of this state; or
 - (5) Any other corporate instrumentality of this state.
2. Any private organization or public organization has the power to apply to the proper authorities of the United States for a grant of the privilege of establishing, operating, and maintaining foreign trade zones and foreign trade subzones and to do all things necessary and proper to carry into effect the establishment, operation, and maintenance of such zones, all in accordance with the Act of Congress and other applicable laws and rules.

SECTION 207. Section 10-32-156 of the North Dakota Century Code is created and enacted as follows:

10-32-156. Miscellaneous - Audit reports and audit of limited liability companies receiving state subsidies for production of alcohol or methanol for combination with gasoline. Any limited liability company that produces agricultural ethyl alcohol or methanol within this state and which receives a production subsidy from the state, whether in the form of reduced taxes or otherwise, shall submit an annual audit report, prepared by a certified public accountant based on an audit of all records and accounts of the limited liability company, to the legislative audit and fiscal review committee. The audit must be submitted within ninety days of the close of the limited liability company's taxable year. Upon request of the legislative audit and fiscal review committee, the state auditor shall conduct an audit of the records and accounts of any limited liability company required to submit an annual report under this section.

SECTION 208. AMENDMENT. Section 45-10.1-01 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-01. (101) Definitions. As used in this chapter, unless the context otherwise requires:

1. "Address" means:
 - a. In the case of a registered office or principal executive office, the mailing address, including the zip code, of the actual office location which may not be only a post-office box; and
 - b. In all other cases, the mailing address, including a zip code.
2. "Certificate of limited partnership" means the certificate referred to in section 45-10.1-08, and the certificate as amended or restated.
- ~~2.~~ 3. "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.
- ~~3.~~ 4. "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in section 45-10.1-26.
5. "Filed with the secretary of state" means:
 - a. That either:
 - (1) A signed original or a legible facsimile copy of a signed original of a request for reserved name; or
 - (2) A signed original of all other documents meeting the applicable requirements of this chapter together with the fees provided in section 45-10.1-15 has been delivered to the secretary of state and has been determined by the secretary of state to conform to law.
 - b. That the secretary of state shall then:

- (1) Endorse on the original the word "filed" and the month, day, and year; and
 - (2) Record the document in the office of the secretary of state.
4. 6. "Foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners.
5. 7. "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.
6. 8. "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.
7. 9. "Limited partnership" and "domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.
10. "Notice":
 - a. Is given to a limited partnership or to a partner of the limited partnership when in writing and mailed or delivered to the limited partnership or the partner at the registered office or principal executive office of the limited partnership.
 - b. In all other cases, is given to a person:
 - (1) When mailed to the person at an address designated by the person or at the last known address of the person;
 - (2) When handed to the person; or
 - (3) When left at the office of the person with a clerk or other person in charge of the office; or
 - (a) If there is no one in charge, when left in a conspicuous place in the office; or
 - (b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion residing there.
 - c. Is given when deposited in the United States mail with sufficient postage affixed.
 - d. Is deemed received when it is given.
8. 11. "Partner" means a general or limited partner.

9. 12. "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.
40. 13. "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.
11. ~~"Person" means a natural person, partnership, limited partnership, trust, estate, association, corporation, or limited liability company.~~
14. "Principal executive office" means:
- a. An office from which the limited partnership conducts business; or
 - b. If the limited partnership has no office from which it conducts business, then the registered office of the limited partnership.
15. "Signed" means that the signature of a person has been placed on a document, as provided in subsection 39 of section 41-01-11, and:
- a. With respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter or by a resolution approved by the affirmative vote of the required proportion or number of partners; and
 - b. With respect to a document that is not required by this chapter to be filed with the secretary of state, means that the signature may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on the document.
42. 16. "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

SECTION 209. AMENDMENT. Section 45-10.1-02 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-02. (102) Name Limited partnership name.

1. The name of each limited partnership as set forth in its certificate of limited partnership:
 - a. Must be in the English language or in another language expressed in English letters or characters.
 4. b. Must contain without abbreviation the words "limited partnership"- or the abbreviation "L.P." or "LP", either of which abbreviation may be used interchangeably for all purposes authorized by this chapter including real estate matters, contracts, and filings with the secretary of state;
 2. c. May not contain the name of a limited partner unless:

- a. (1) It is also the name of a general partner; the corporate name of a corporate general partner or the limited liability company name of a limited liability company general partner; or
- b. (2) The business of the limited partnership had been carried on under that name before the admission of that limited partner.
- d. May not contain a word or phrase that indicates or implies it may not be organized under this chapter.
- e. May not contain a word or phrase indicating or implying it is organized for a purpose other than a legal business purpose for which a limited partnership may be organized under this chapter.
- 3. f. May not contain any a word or phrase indicating or implying that it is organized other than for a purpose stated in its certificate of limited partnership.
- 4. g. May not contain the word "corporation", "company", or "incorporated", "limited liability company", "limited liability partnership", or any abbreviation of those words.
- 5. May not be the same as or deceptively similar to the name of any corporation, limited liability company, or limited partnership organized under the laws of this state or licensed or registered as a foreign corporation, foreign limited liability company, or limited partnership in this state, or a trade name or fictitious name certificate on file with the secretary of state, unless there is filed with the certificate of limited partnership a written consent of the holder of the similar name to use the name proposed by the limited partnership.
- h. May not be the same as, or deceptively similar to:
 - (1) The name, whether foreign and authorized to do business in this state, or domestic, unless there is filed with the articles a document in compliance with subsection 2 of this section, of:
 - (a) Another limited partnership;
 - (b) A corporation;
 - (c) A limited liability company; or
 - (d) A limited liability partnership; or
 - (2) A name the right to which is, at the time of organization, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
 - (3) A fictitious name registered in the manner provided in chapter 45-11; or
 - (4) A trade name registered in the manner provided in chapter 47-25.

2. The secretary of state shall determine whether a limited partnership name is deceptively similar to another name for purposes of this chapter.
3. If the secretary of state determines a limited partnership name is deceptively similar to another name for purposes of this chapter, then the limited partnership name may not be used unless there is filed with the articles:
 - a. The written consent of the holder of the registered trade name or the holder of the rights to the name to which the proposed name has been determined to be deceptively similar; or
 - b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
4. Subsection 3 does not affect the right of a domestic limited partnership existing on the effective date of this chapter, or a foreign limited partnership authorized to do business in this state on that date to continue the use of its name.
5. This section and section 45-10.1-03 do not:
 - a. Abrogate or limit:
 - (1) The law of unfair competition or unfair practices;
 - (2) Chapter 47-25;
 - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks; or
 - (4) Any other rights to the exclusive use of names or symbols; or
 - b. Derogate the common law or the principles of equity.
6. A limited partnership that is merged with another domestic or foreign organization, or that is organized by the reorganization of one or more domestic or foreign organizations, or that acquires by sale, lease, or other disposition to or exchange with a domestic organization all or substantially all of the assets of another domestic or foreign organization including its name, may include in its name the name of any of the other organizations, if the other organization:
 - a. Was incorporated, organized, formed, or registered under the laws of this state;
 - b. Is authorized to transact business or conduct activities in this state;
 - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
 - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or

- e. Holds a trade name registered in the manner provided in chapter 47-25.
7. The use of a name by a limited partnership in violation of this section does not affect or vitiate its limited partnership existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the limited partnership from doing business under a name assumed in violation of this section, although its certificate of limited partnership may have been filed with the secretary of state.

SECTION 210. AMENDMENT. Section 45-10.1-03 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-03. (103) Reservation of Reserved name.

1. The exclusive right to the use of a limited partnership name otherwise permitted by section 45-10.1-02 may be reserved by:
 - a. ~~Any person intending to organize a limited partnership under this chapter and to adopt that name.~~
 - b. ~~Any domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name.~~
 - e. ~~Any foreign limited partnership intending to register in this state and adopt that name.~~
 - d. ~~Any person intending to organize a foreign limited partnership and intending to have it register in this state and adopt that name any person.~~
2. The reservation must be made by filing with the secretary of state ~~an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign limited partnership, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of one hundred twenty days~~ a request that the name be reserved, together with the fees provided in section 45-10.1-15:
 - a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.
 - b. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a ~~reserved~~ limited partnership name reserved pursuant to this section may be transferred to ~~any other~~ another person by or on behalf of the applicant for whom the name was reserved by filing in the office of the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee, together with fees provided in section 45-10.1-15.

4. The right to the exclusive use of a limited partnership name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of cancellation, together with the fees provided in section 45-10.1-15.
5. The secretary of state may accept for filing a legible facsimile copy of the signed original of any request for reserved name.
6. The secretary of state may destroy all reserved name requests and index thereof one year after expiration.

SECTION 211. AMENDMENT. Section 45-10.1-04 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-04. (104) Specified Registered office and - Registered agent. ~~Each limited partnership shall continuously maintain in this state:~~

1. ~~An office, which may but need not be a place of its business in this state, at which shall be kept the records required by section 45-10.1-05 to be maintained. A limited partnership shall continuously maintain a registered office in this state. A registered office need not be the same as the principal place of business or the principal executive office of the limited partnership.~~
2. ~~An agent for service of process on the limited partnership, which agent must be an individual resident of this state, a domestic corporation, a domestic limited liability company, a foreign corporation, or a foreign limited liability company authorized to do business in this state. The limited partnership shall appoint and continuously maintain a registered agent who may be:~~
 - a. An individual residing in this state;
 - b. A domestic corporation;
 - c. A domestic limited liability company; or
 - d. A foreign corporation or foreign limited liability company authorized to transact business in this state.
3. The registered agent shall maintain a business office identical to its registered office.

SECTION 212. AMENDMENT. Section 45-10.1-07.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-10.1-07.1. Registration of general partner. A general partner must be registered separately with the secretary of state at the time of filing a certificate of limited partnership or the registration of foreign limited partnership whenever that general partner is either a domestic or foreign:

1. Corporation;
2. Limited liability company;

3. Limited liability partnership;
4. Limited partnership;
4. 5. General partnership using a fictitious name; or
5. 6. Any other organization that has a registration responsibility with the secretary of state.

SECTION 213. AMENDMENT. Section 45-10.1-08 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-08. (201) Certificate of limited partnership.

1. In order to form a limited partnership, a certificate of limited partnership must be executed and filed in the office of the secretary of state. The certificate must set forth:
 - a. The name of the limited partnership.
 - b. The general character of its business.
 - c. The address of the office and the name and address of the agent for service of process required to be maintained by section 45-10.1-04.
 - d. The name and address of the principal place of business of each general partner.
 - e. ~~The latest date upon which the limited partnership is to dissolve.~~
 - f. Any other matters the general partners determine to include therein.
2. A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

SECTION 214. AMENDMENT. Section 45-10.1-51 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-51. (901) Foreign limited partnership - Law governing. Subject to the Constitution of North Dakota, the laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners, and a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this state.

SECTION 215. AMENDMENT. Section 45-10.1-52 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-52. (902) Foreign limited partnership - Registration. Before transacting business in this state, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state, on forms prescribed and furnished by the secretary of state, an application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth all of the following:

1. The name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this state.
2. The state and date of its formation.
3. The general character of the business it proposes to transact in this state.
4. The name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint; the agent must be an individual resident of this state, a domestic corporation, a domestic limited liability company, a foreign corporation, or a foreign limited liability company having a place of business in, and authorized to do business in, this state.
5. A statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if the agent's authority has been revoked or if the agent cannot be found or served with the exercise of reasonable diligence.
6. The address of the principal office of the foreign limited partnership.
7. The name and address of the principal place of business of each general partner.
8. The address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn.

The application must be accompanied by a certificate of identification, existence, and status of a foreign limited partnership, duly certified by the proper officer of the state or country under the laws of which it is organized.

SECTION 216. AMENDMENT. Section 45-10.1-53 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-53. (903) Foreign limited partnership - Filing of registration. If the secretary of state finds that an application for registration conforms to law and all requisite fees have been paid, the secretary of state shall:

1. Endorse on the application the word "Filed", and the month, day, and year of the filing.
2. File the application in the office of the secretary of state.

SECTION 217. AMENDMENT. Section 45-10.1-54 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-54. (904) Foreign limited partnership - Name. A foreign limited partnership may register with the secretary of state under any name, whether or not it is the name under which it is registered in its state of organization, that includes without abbreviation the words "limited partnership" and that could be registered by a domestic limited partnership.

SECTION 218. AMENDMENT. Section 45-10.1-55 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-55. (905) Foreign limited partnership - Changes and amendments.

1. If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the secretary of state a certificate, signed and sworn to by a general partner, correcting the statement.
2. A foreign limited partnership that amends its name and is the owner of a trademark, or uses a fictitious name registered with the secretary of state, or is a general partner of another limited partnership on file with the secretary of state, must effect a change of name in each of such registrations simultaneously with the filing of the certificate amending the registration of foreign limited partnership.
3. A foreign limited partnership must file a certificate of amendment, signed and sworn to by a general partner, whenever a general partner that is a corporation files an amendment changing its corporate name, or when it files an application for an amended certificate of authority. This certificate of amendment must be filed simultaneously with the amendment to the articles of incorporation or application for amended certificate of authority.
4. A foreign limited partnership must notify the secretary of state in writing whenever a general partner changes the address of its principal place of business. A corporate annual report filed by the secretary of state that reflects a change of address of a general partner may serve as such notice. This notice is not subject to the amendment fee prescribed in 45-10.1-15.

SECTION 219. AMENDMENT. Section 45-10.1-56 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-56. (906) Foreign limited partnership - Cancellation of registration.

A foreign limited partnership may cancel its registration by filing with the secretary of state a certificate of cancellation signed and sworn to by a general partner. A cancellation does not terminate the authority of the secretary of state to accept service of process on the foreign limited partnership with respect to claims for relief arising out of the transactions of business in this state.

SECTION 220. AMENDMENT. Section 45-10.1-57 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-57. (907) Foreign limited partnership - Transaction of business without registration.

1. A foreign limited partnership transacting business in this state may not maintain any action or proceeding in any court of this state until it has registered in this state.
2. The failure of a foreign limited partnership to register in this state does not impair the validity of any contract or act of the foreign limited

partnership or prevent the foreign limited partnership from defending any action or proceeding in any court of this state.

3. A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of having transacted business in this state without registration.
4. A foreign limited partnership, by transacting business in this state without registration, appoints the secretary of state as its agent for service of process with respect to claims for relief arising out of the transaction of business in this state.
5. Without excluding other activities which may constitute transacting business in this state, a foreign limited partnership shall not be considered to be transacting business in this state, for the purposes of this chapter only, by reason of carrying on in this state any one or more of the following activities:
 - a. Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.
 - b. Holding meetings of its partners or carrying on other activities concerning its internal affairs.
 - c. Maintaining bank accounts.
 - d. Maintaining offices or agencies for the transfer, exchange, and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities.
 - e. Effecting sales through independent contractors.
 - f. Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts.
 - g. Creating evidences of debt, mortgages, or liens on real or personal property.
 - h. Securing or collecting debts or enforcing any rights in property securing the same.
 - i. Transacting any business in interstate commerce.
 - j. Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

This subsection does not establish a standard for activities which may or may not subject a foreign limited partnership to taxation or service of process.

SECTION 221. AMENDMENT. Section 45-10.1-58 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-58. (908) Foreign limited partnership - Action by secretary of state.

The secretary of state may revoke the registration of a foreign limited partnership for transacting business in this state in violation of sections 45-10.1-52 through 45-10.1-58, or that has failed to file a renewal statement as required by section 45-10.1-14. The secretary of state may not revoke the registration of a foreign limited partnership unless the secretary of state has given the foreign limited partnership not less than sixty days' notice by mail addressed to its registered office in this state and the principal office of record, and the foreign limited partnership has failed to remedy the deficiency prior to revocation.

SECTION 222. AMENDMENT. Section 45-20-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-20-01. (801) (~~Effective January 1, 1996~~) Events causing dissolution and winding up of partnership business. A partnership is dissolved, and its business must be wound up, only upon the occurrence of any of the following events:

1. In a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under subsections 2 through 10 of section 45-18-01, of that partner's express will to withdraw as a partner, or on a later date specified by the partner.
2. In a partnership for a definite term or particular undertaking:
 - a. ~~The expiration of~~ Within ninety days after a partner's dissociation by death or otherwise under subsections 6 through 10 of section 45-18-01 or wrongful dissociation under subsection 2 of section 45-18-02, ~~unless before that time a majority in interest of the remaining partners, including partners who have rightfully dissociated pursuant to subdivision a of subsection 2 of section 45-18-02, agree to continue the partnership~~ the express will of at least half of the remaining partners to wind up the partnership business, for which purpose a partner's rightful dissociation under paragraph 1 of subdivision b of subsection 2 of section 45-18-02 constitutes the expression of that partner's will to wind up the partnership business;
 - b. The express will of all of the partners to wind up the partnership business; or
 - c. The expiration of the term or the completion of the undertaking.
3. An event agreed to in the partnership agreement resulting in the winding up of the partnership business.
4. An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within ninety days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section.
5. On application by a partner, a judicial determination that:
 - a. The economic purpose of the partnership is likely to be unreasonably frustrated;

- b. Another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner; or
 - c. It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement.
6. On application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business:
- a. After the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or
 - b. At any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

SECTION 223. AMENDMENT. Section 45-22-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Address" means ~~mailing address. In the case of a registered office or principal executive office, the term means the office address, which may not be a post-office box:~~
 - a. In the case of a registered office or principal executive office, the mailing address, including the zip code, of the actual office location which may not be only a post-office box; and
 - b. In all other cases, the mailing address, including a zip code.
2. "Domestic limited liability partnership" means a general partnership that is organized under the laws of this state with a registration or a renewal registration in effect and which is not a foreign limited liability partnership.
3. "Filed with the secretary of state" means ~~that a signed original of a document, together with the fees provided in section 45-22-23, has been delivered to the secretary of state and has been determined by the secretary of state to conform to law:~~
 - a. That either:
 - (1) A signed original or a legible facsimile copy of a signed original of a request for reserved name; or
 - (2) A signed original of all other documents meeting the applicable requirements of this chapter, together with the fees provided in section 45-22-23, has been delivered to the secretary of state and has been determined by the secretary of state to conform to law.

- b. That the secretary of state shall then:
 - (1) Endorse on the original the word "filed" and the month, day, and year; and
 - (2) Record the document in the office of the secretary of state.
4. "Foreign limited liability partnership" means a limited liability partnership:
 - a. Which is organized under laws other than the laws of this state for a purpose or purposes for which a limited liability partnership may be organized under this chapter;
 - b. With a registration or renewal registration in effect; and
 - c. ~~Which continuously maintains its limited liability partnership status~~ In good standing in its jurisdiction of origin during all periods of registration and renewal registration.
5. "General partnership" means an association of two or more persons to carry on as coowners of a business for profit formed under North Dakota law, predecessor law, or comparable law of another jurisdiction.
6. "Jurisdiction of origin" refers to the jurisdiction in which the limited liability partnership status of the foreign limited liability partnership was created.
7. "Limited liability partnership" and "partnership" mean either:
 - a. ~~A means a~~ domestic limited liability partnership; ~~or~~
 - b. ~~A foreign limited liability partnership.~~
- ~~7.~~ 8. "Managing ~~partners~~ partner" means one of the partners charged with the management in this state of the limited liability partnership or foreign limited liability partnership and if no partners are so specifically designated, then all partners.
- ~~8.~~ 9. "Notice" is:
 - a. Is given to a limited liability partnership or to a partner of the partnership when in writing and mailed or delivered to the partnership or the partner at the registered office or principal executive office of the partnership; and
 - a. b. In all other cases, "notice" is given to a person:
 - (1) When mailed to the person at an address designated by the person or at the last known address of the person; or
 - (2) When handed to the person; or
 - (3) When left at the office of the person with a clerk or other person in charge of the office; or

- (a) If there is no one in charge, when left in a conspicuous place in the office; or
 - (b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing therein.
- b. ~~c.~~ c. Notice by mail is is given when deposited in the United States mail with sufficient postage affixed.
- e. ~~d.~~ d. Notice is is deemed received when it is given.
9. ~~10.~~ 10. "Originally registered" and "original registration" refers to the ~~jurisdiction in which the limited liability partnership status of the foreign limited liability partnership was created~~ document establishing the limited liability partnership status of the foreign limited liability partnership in its jurisdiction of origin.
40. ~~11.~~ 11. "Principal executive office" means ~~an:~~
- a. An office where from which the limited liability partnership conducts business; or
 - b. If the limited liability partnership has no office from which it conducts business, then the ~~term means the~~ registered office of the partnership.
44. ~~12.~~ 12. "Register" means the act of filing with the secretary of state which causes:
- a. A domestic limited liability partnership to be created; or
 - b. A foreign limited liability partnership to be authorized to transact business in this state.
42. ~~13.~~ 13. "Registered office" means the place in this state designated as the registered office of the limited liability partnership.
43. ~~14.~~ 14. "Registration" means the document which, when filed with the secretary of state, causes:
- a. A domestic limited liability partnership to be created; or
 - b. A foreign limited liability partnership to be authorized to do business in this state.
44. ~~15.~~ 15. "Renewal registration" means the document by which the status of a domestic limited liability partnership or a foreign limited liability partnership is extended for an additional one-year period.
45. ~~16.~~ 16. "Signed" means that the signature of a person has been placed on a document, as provided in subsection 39 of section 41-01-11; ~~and, with:~~
- a. With respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by

a person authorized to do so by this chapter, or by or pursuant to an agreement among the partners, or by a resolution approved by the affirmative vote of the required proportion or number of partners. ~~A signature on;~~ and

- b. With respect to a document not required by this chapter to be filed with the secretary of state the signature may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on the document.

² **SECTION 224. AMENDMENT.** Section 45-22-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-03. Registration.

1. In determining whether the underlying general partnership necessary for registration as a domestic limited liability partnership has been formed, the rules set forth in section 45-14-01 apply.
2. A limited liability partnership or foreign limited liability partnership must have in effect and filed with the secretary of state a registration that complies with this section.
 - a. For one year from its date of filing, the registration of:
 - (1) A domestic limited liability partnership establishes its status as a domestic limited liability partnership; and
 - (2) A foreign limited liability partnership authorizes it to transact business in this state.

Unless a renewal registration is properly filed with the secretary of state, the registration is subject to revocation by the secretary of state as provided in section 45-22-16.

- b. The limited liability partnership or foreign limited liability partnership may file a renewal registration that complies with this section no earlier than sixty days before the expiration of the one-year period.
 - (1) A ~~limited liability partnership~~ registration may be renewed for successive one-year periods.
 - (2) A proper renewal registration extends the registration of a limited liability partnership or foreign limited liability partnership for another one-year period, measured from the end of the previous one-year period.
 - (3) Unless a renewal registration is properly filed with the secretary of state, the registration shall be subject to

² Section 45-22-03 was also amended by section 34 of Senate Bill No. 2046, chapter 51.

revocation by the secretary of state as provided in section 45-22-16.

3. A registration or renewal registration must contain:
 - a. With respect to a domestic limited liability partnership:
 - (1) The name of the domestic limited liability partnership.
 - (2) The nature of the business to be transacted in this state.
 - (3) The address of the principal executive office of the domestic limited liability partnership.
 - (4) The address of the registered office of the domestic limited liability partnership and the name of its registered agent at that address.
 - (5) The name and address of each managing partner.
 - (6) An acknowledgment that the status of limited liability partnership will automatically expire, unless the partnership files a proper renewal registration.
 - (7) An acknowledgment that other jurisdictions, including other jurisdictions that have limited liability partnership statutes, may not provide any limited liability shield or may not provide as broad a limited liability shield as does this chapter.
 - b. With respect to a foreign limited liability partnership:
 - (1) The name of the foreign limited liability partnership and, if different, the name under which it proposes to transact business in this state.
 - (2) The jurisdiction of its original registration.
 - (3) The date on which the foreign limited liability partnership expires in the jurisdiction of its origin.
 - (4) The nature of the business to be transacted in this state.
 - (5) The address of the principal executive office of the foreign limited liability partnership.
 - (6) The address of the registered office of the foreign limited liability partnership and the name of its registered agent at that address.
 - (7) The name and address of each managing partner.
 - (8) An acknowledgment that the status of limited liability partnership in this state will automatically expire:
 - (a) Unless the foreign limited liability partnership files a proper renewal registration; and

- (b) Unless the foreign limited liability partnership continuously maintains its limited liability partnership status in its jurisdiction of origin.
 - c. The registration must be accompanied by payment of the fees provided in section 45-22-22 together with a certificate of good standing or certificate of existence authenticated by the registering officer of the state or country where the foreign limited liability partnership is originally registered and the consent of the designated registered agent for service of process to serve in that capacity.
4. An original of the registration or renewal registration must be filed with the secretary of state.
 - a. If the secretary of state finds that the registration or renewal registration conforms to law and that the fees provided in section 45-22-22 have been paid, the secretary of state shall endorse on the original the word "filed" and the day, month, and year of the filing and shall file the original in the office of the secretary of state.
 - b. If any statement in the registration or renewal registration was false when made or becomes inaccurate after the registration or renewal registration is filed, making the registration or renewal registration false or inaccurate in any respect:
 - (1) The limited liability partnership or foreign limited liability partnership shall file promptly with the secretary of state an amended or corrected registration or renewal registration or reflect the changes on its next renewal registration; and
 - (2) With respect to foreign limited liability partnerships:
 - (a) In the case of a change in its name, a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability partnership is originally registered; or
 - (b) In the case of a termination or merger:
 - [1] A foreign limited liability partnership that is not the surviving organization need not file an amended registration but, within thirty days after the merger or termination becomes effective, shall file with the secretary of state a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability partnership is originally registered.
 - [2] It is not necessary for any foreign limited liability partnership, which is the surviving organization in a merger, to procure either a new or amended registration unless the name of the foreign limited liability partnership is changed or unless the foreign limited liability partnership desires to

pursue in this state purposes other than those which it is authorized to transact in this state.

- c. With respect to renewals:
 - (1) A renewal registration received by the secretary of state in a sealed envelope postmarked by the United States postal service on or before the lapse, or a renewal registration in a sealed packet with a verified shipment date by any other carrier service on or before the lapse, and properly addressed to the secretary of state is deemed to be in compliance with the requirement for timely delivery. When a lapse falls on a Saturday, Sunday, or other holiday as defined in section 1-03-01, a postmark or verified shipment date on the next business day is in compliance with this requirement.
 - (2) The secretary of state must file the renewal registration if the renewal registration conforms to the requirements of this section.
 - (3) If the renewal registration does not conform, the registration must be returned to the limited liability partnership or foreign limited liability partnership for any necessary corrections. If the corrected renewal registration is filed after the lapse date, but within thirty days after it is returned for correction, the penalties for failure to file the renewal registration within the time required do not apply.
 - (4) Each limited liability partnership or foreign limited liability partnership that fails or refuses to file its renewal registration on or before the lapse date of a registration, must pay an additional late renewal fee as provided in section 45-22-22.
 - d. The secretary of state may destroy any registrations and renewal registrations which have been on file for seven years.
5. A managing partner must be separately registered with the secretary of state at the time of the registration of a limited liability partnership whenever that managing partner is either a domestic or foreign:
 - a. Corporation;
 - b. Limited liability company;
 - c. Limited partnership;
 - d. Limited liability partnership; or
 - e. General partnership using a fictitious name.
 6. With respect to a domestic limited liability partnership:
 - a. A general partnership's decision to file a registration is an ordinary matter that may be decided by a majority of the partners.

- b. The decision to withdraw or not renew a registration may be undertaken only with the consent of all of the partners.
7. A general partnership that registers as a limited liability partnership is not deemed to have dissolved as a result of the registration.
8. If a limited liability partnership or foreign limited liability partnership dissolves without winding up its business or changes its jurisdiction of origin, a partnership which is a successor to such limited liability partnership or foreign limited liability partnership and which intends to be a limited liability partnership or foreign limited liability partnership shall not be required to file a new registration or renewal and shall be deemed to have filed any documents required or permitted under this section which were filed by the predecessor partnership.

SECTION 225. AMENDMENT. Section 45-22-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-04. Limited liability partnership - Name.

1. The name of a limited liability partnership:
 - a. Must be in the English language or in any other language, expressed in English letters or characters.
 - b. Must contain the words "limited liability partnership" or either the abbreviation "L.L.P." or the abbreviation "LLP", either of which abbreviations can be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state, or any other words or abbreviations as may be authorized or required under the laws of the jurisdiction of original registration.
 - c. May not contain a word or phrase that indicates or implies that it may not be formed under this chapter.
 - d. May not contain a word or phrase that indicates or implies that it is formed for a purpose other than one or more business purposes for which a partnership may be formed under North Dakota law.
 - d. ~~May not be the same as, or deceptively similar to, the name of a domestic or foreign corporation, limited liability company, limited partnership or limited liability partnership, whether for profit or nonprofit, authorized to do business in this state, or a name the right to which is, at the time of formation, reserved in the manner provided in section 45-22-05 or is a fictitious name registered with the office of the secretary of state in the manner provided in chapter 45-14 or is a trade name registered with the office of the secretary of state in the manner provided in chapter 47-25, unless there is filed with the registration:~~
 - (1) ~~The written consent of the domestic or foreign corporation, limited liability company, limited partnership, limited liability partnership or partnership authorized to do business in the state having a deceptively similar name or the holder of a~~

- reserved name or registered trade name to use the deceptively similar name; or
- (2) A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
- e. May not be the same as, or deceptively similar to:
- (1) The name, whether foreign and authorized to do business in this state, or domestic, unless there is filed with the registration a document which complies with subsection 2 of this section, or:
- (a) Another limited liability partnership;
- (b) A corporation;
- (c) A limited liability company; or
- (d) A limited partnership; or
- (2) A name, the right to which is at the time of registration reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
- (3) A fictitious name registered in the manner provided in chapter 45-11; or
- (4) A trade name registered in the manner provided in chapter 47-25.
- f. Need not be filed as provided in chapter 45-11 except when transacting business under a name other than the name as registered under this chapter.
2. The secretary of state shall determine whether a name is "~~deceptively similar~~" deceptively similar to another name for purposes of this section.
3. If the secretary of state determines that a limited liability partnership name is deceptively similar to another name for purposes of this chapter, then the limited liability partnership name may not be used unless there is filed with the registration:
- a. The written consent of the holder of the rights to the name to which the proposed name has been determined to be deceptively similar; or
- b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
4. This section and section 45-22-05 do not:
- a. Abrogate or limit:
- (1) The law of unfair competition or unfair practices;

- (2) Chapter 47-25;
 - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, and service marks; or
 - (4) Any other rights to the exclusive use of names or symbols.
 - b. Derogate the common law or principles of equity.
5. A limited liability partnership that is merged with another domestic or foreign organization, that is registered by the reorganization of one or more domestic or foreign organizations, or that acquires by sale, lease, or other disposition to or exchange with a domestic organization all or substantially all of the assets of another domestic or foreign organization including its name, may have the same name as that used in this state by any of the other organizations, if the other organization:
 - a. Was incorporated, organized, formed, or registered under the laws of this state;
 - b. Is authorized to transact business or conduct activities in this state;
 - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
 - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
 - e. Holds a trade name registered in the manner provided in chapter 47-25.
- ~~4.~~ 6. The use of a name by a limited liability partnership in violation of this section does not affect or vitiate its limited liability partnership existence. However, a court of this state may, upon application of the state or of an interested or affected person, enjoin the limited liability partnership from doing business under a name assumed in violation of this section, even though its registration may have been filed with the secretary of state.
- ~~5.~~ 7. With respect to foreign limited liability partnerships:
 - a. A foreign limited liability partnership may register under any name that would be available to a domestic limited liability partnership, whether or not the name is the same under which it is authorized in its jurisdiction of original registration.
 - b. A fictitious name certificate must be filed as provided in chapter 45-11 only when registering under a name other than the name as authorized in the jurisdiction of original registration.

SECTION 226. AMENDMENT. Section 45-22-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-05. Reserved name.

1. The exclusive right to the use of a limited liability partnership or foreign limited liability partnership name otherwise permitted by section 45-22-04 may be reserved by any person.
2. The reservation is made by filing with the secretary of state a request that the name be reserved together with the fees provided in section 45-22-22.
 - a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.
 - b. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of limited liability partnership or foreign limited liability partnership name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee together with the fees provided in section 45-22-22.
4. The right to the exclusive use of a limited liability partnership or foreign limited liability partnership name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of cancellation together with the fees provided in section 45-22-22.
5. The secretary of state may accept for filing a legible facsimile copy of the signed original of any request for reserved name.
6. The secretary of state may destroy all reserved name requests and index thereof one year after expiration.

SECTION 227. AMENDMENT. Section 45-22-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-06. Failure to use required name. If a person purports to enter into a contract or other undertaking on behalf of a limited liability partnership and with intent to defraud does not disclose to the other party that part of the limited liability partnership's name that complies with subsection 1 of section 45-22-04, then that person is personally liable on the contract or undertaking, unless that person can show in making the contract or accepting the undertaking that the other party had knowledge or notice that the partnership was a limited liability partnership, or did not rely on the partnership being an ordinary general partnership. Any partner of a limited liability partnership who with intent to defraud consents to a person not making the disclosure described in this section is also personally liable on the contract or undertaking, unless that partner can make the showing described in this section.

SECTION 228. AMENDMENT. Section 45-22-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-07. Unauthorized assumption of limited liability partnership powers - Liability. A person who assumes to act as a limited liability partnership ~~without a~~

knowing that no registration or renewal registration ~~is~~ is in effect ~~is~~ jointly and severally liable for all debts and liabilities incurred or arising as a result.

SECTION 229. AMENDMENT. Section 45-22-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-08. Limited liability partnership shield. A partner of a limited liability partnership is not, merely on account of this status, personally liable for anything chargeable to the partnership under sections 45-15-05 and 45-15-06, or for any other debts or obligations of the limited liability partnership, if the charge, debt, or obligation arose or accrued while the partnership had a registration or renewal registration in effect. A registration or renewal registration remains in effect until revoked by the secretary of state pursuant to section 45-22-16. This section does not limit or impair the right of the limited liability partnership or its partners to make claims against any particular partner on the grounds that the particular partner:

1. ~~Has~~ has, in its capacity as a partner, breached a duty to the limited liability partnership or to the other partners; ~~or~~
2. ~~Is obligated to contribute so that partners share losses of capital according to section 45-16-01 and share the liabilities stated in subsections 2 and 3 of section 45-20-07.~~

SECTION 230. AMENDMENT. Section 45-22-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-11. Registered office and agent.

1. A limited liability partnership or foreign limited liability partnership shall continuously ~~shall~~ maintain a registered office in this state. A registered office need not be the same as the principal place of business or the principal executive office of the limited liability partnership or foreign limited liability partnership.
2. A limited liability partnership or foreign limited liability partnership shall ~~designate~~ appoint and continuously maintain a registered agent in its registration who may be.
 - a. ~~The registered agent may be an~~ An individual residing in this state; ~~a;~~
 - b. A domestic corporation, a domestic limited liability company, or a domestic limited liability partnership; ~~;~~ ; ~~or a~~
 - c. A foreign corporation, foreign limited liability company, or foreign limited liability partnership authorized to transact business in this state.
 - b. ~~The registered agent must maintain a business office that is identical with the registered office.~~
- e. 3. Proof of the registered agent's consent to serve in that capacity must be filed with the secretary of state, together with the fees provided in section 45-22-22.

SECTION 231. AMENDMENT. Section 45-22-12 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-12. Change of registered office or agent.

1. A limited liability partnership or foreign limited liability partnership may change its registered office, change its registered agent, or state a change in the name of its registered agent, by filing with the secretary of state, along with the fees provided in section 45-22-22, a statement containing:
 - a. The name of the limited liability partnership or foreign limited liability partnership.
 - b. If the address of its registered office is to be changed, the new address of its registered office.
 - c. If its registered agent is to be designated or changed, the name of its new registered agent.
 - d. If the name of its registered agent is to be changed, the name of its registered agent as changed.
 - e. A statement that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.
 - f. A statement that the change of registered office or registered agent was authorized by resolution of the partnership.
2. A registered agent may resign by filing with the secretary of state a written notice of resignation, including a statement that a signed copy of the notice has been given to the limited liability partnership or foreign limited liability partnership at its principal executive office, or to a legal representative of the limited liability partnership or foreign limited liability partnership. The appointment of the agent terminates thirty days after the notice is filed with the secretary of state.
3. If the business address or name of a registered agent changes, the agent shall change the address of the registered office or name of the registered agent; ~~as the case may be~~; of each limited liability partnership or foreign limited liability partnership represented by that agent by filing with the secretary of state a statement for each limited liability partnership or foreign limited liability partnership as required in subsection 1, except that it need be signed only by the registered agent, need not be responsive to subdivision c or f of subsection 1, and must state that a copy of the statement has been mailed to each of those limited liability partnerships or foreign limited liability partnerships or to the legal representative of each of those limited liability partnerships or foreign limited liability partnerships.
4. The fee prescribed in section 45-22-22 for the change of registered office must be refunded when, in the opinion of the secretary of state, the change of address of registered office results from rezoning or postal reassignment.

SECTION 232. AMENDMENT. Section 45-22-13 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-13. Voluntary withdrawal of status.

1. A partnership may end its status as a limited liability partnership or foreign limited liability partnership at any time by filing a withdrawal statement with the secretary of state.
2. The withdrawal statement must contain:
 - a. With respect to a domestic limited liability partnership:
 - (1) The name of the domestic limited liability partnership.
 - (2) A statement that the domestic limited liability partnership is withdrawing its current registration.
 - (3) An acknowledgment by the domestic limited liability partnership that the withdrawal ends its limited liability partnership status.
 - b. With respect to a foreign limited liability partnership:
 - (1) The name of the foreign limited liability partnership.
 - (2) The jurisdiction of ~~its original registration~~ origin.
 - (3) A statement ~~that~~ the foreign limited liability partnership is not transacting business in this state as a foreign limited liability partnership.
 - (4) A statement that the foreign limited liability partnership surrenders its authority to transact business in this state as a foreign limited liability partnership and is withdrawing its current registration.
 - (5) An acknowledgment by the foreign limited liability partnership that the withdrawal ends its foreign limited liability partnership status in this state.
 - (6) A statement ~~that~~ the foreign limited liability partnership revokes the authority of its registered agent in this state to accept service of process and consents that service of process based upon any cause of action arising in this state during the time the foreign limited liability partnership was authorized to transact business in this state may be made on the foreign limited liability partnership by service upon the secretary of state.
 - (7) A post-office address to which a person may mail a copy of any process against the foreign limited liability partnership.
3. The withdrawal statement may state a delayed withdrawal date, if that date is before the expiration date of the current registration. If the

withdrawal statement does not state an effective date, then the statement is effective when filed.

4. If the foreign limited liability partnership is not the surviving organization in a merger or termination, then the filing with the secretary of state of a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability partnership is originally registered constitutes a valid withdrawal statement.

SECTION 233. AMENDMENT. Section 45-22-14 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-14. Filing after dissolution.

1. A dissolved limited liability partnership or a foreign limited liability partnership that is winding up its affairs may continue its status as a limited liability partnership or foreign limited liability partnership through termination either by:
 - a. Continuing to file annual renewal registrations until termination; or
 - b. Filing a final renewal registration that, in addition to providing the information required by subsection 3 of section 45-22-03:
 - (1) States ~~that~~ the partnership is dissolved and is winding up its affairs.
 - (2) Identifies the cause of the dissolution.
 - (3) States ~~that~~ the renewal registration is the final renewal registration and will remain in effect until termination.
2. A final renewal registration that complies with subdivision b of subsection 1 must not contain the statement required in:
 - a. Paragraph 6 of subdivision a of subsection 3 of section 45-22-03 in the case of a domestic limited liability partnership; or
 - b. Paragraph 8 of subdivision b of subsection 3 of section 45-22-03 in the case of a foreign limited liability partnership.
3. When the dissolved limited liability partnership or foreign limited liability partnership has wound up its affairs, it shall file with the secretary of state a termination notice, together with the fees provided in section 45-22-22. The termination notice must:
 - a. Contain:
 - (1) The name of the limited liability partnership or foreign limited liability partnership.
 - (2) A statement ~~that~~ the limited liability partnership or foreign limited liability partnership has dissolved and wound up its affairs.

- (3) A statement ~~that~~ the limited liability partnership or foreign limited liability partnership is terminated.
- b. Be signed by one former managing partner who has not wrongfully dissolved the partnership or, in the case of a foreign limited liability partnership, by a managing partner.

SECTION 234. AMENDMENT. Section 45-22-16 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-16. Revocation of registration.

1. The registration of a limited liability partnership or foreign limited liability partnership may be revoked by the secretary of state upon the occurrence of any of these events:
 - a. The limited liability partnership or foreign limited liability partnership has failed:
 - (1) To appoint and maintain a registered agent as required by this chapter;
 - (2) To file a report upon any change in the name or business address of the registered agent;
 - (3) To file any required amendment to its registration; or
 - (4) To file a renewal registration as provided in subsection 2 of section 45-22-04.
 - b. ~~A~~ An intentional misrepresentation ~~or mistake~~ has been made in any material matter in any registration, report, affidavit, or other document submitted by the limited liability partnership or foreign limited liability partnership pursuant to this chapter.
2. The secretary of state may not revoke the registration of a limited liability partnership or foreign limited liability partnership unless:
 - a. The secretary of state has given the limited liability partnership or foreign limited liability partnership at least sixty days' notice of the reason for the pending revocation by mail addressed to its registered office or, if the limited liability partnership or foreign limited liability partnership fails to appoint and maintain a registered agent in this state, then addressed to its principal executive office; and
 - b. During the sixty-day period, the limited liability partnership or foreign limited liability partnership has failed:
 - (1) To appoint and maintain a registered agent as required by this chapter;
 - (2) To file the report of change regarding the name or business address of the registered agent;
 - (3) To file the required amendment to its registration;

- (4) To file a renewal registration as provided in subsection 2 of section 45-22-04; or
 - (5) To correct the misrepresentation ~~or mistake~~.
3. Upon the expiration of the sixty-day period without the limited liability partnership or foreign limited liability partnership having cured the reason for the pending revocation set forth in the notice, the registration is revoked. The secretary of state shall note the revocation in the records of the secretary of state and shall give notice of the revocation to the limited liability partnership or foreign limited liability partnership. Notice by the secretary of state must be mailed to the last registered agent at the last registered office of record. If the limited liability partnership or foreign limited liability partnership failed to appoint and maintain a registered office in this state, then to its principal executive office.

SECTION 235. AMENDMENT. Section 45-22-17 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-17. Service of process on a limited liability partnership or foreign limited liability partnership.

1. A process, notice, or demand required or permitted by law to be served on a limited liability partnership or foreign limited liability partnership may be served either on the registered agent ~~of the limited liability partnership~~ or on any responsible person found at the registered office ~~of the limited liability partnership~~ or on the secretary of state as provided in this section.
2. If neither the registered agent nor a responsible person can be found at the registered office and if a responsible person affiliated with the limited liability partnership or foreign limited liability partnership cannot be found at the principal place of business in this state, the secretary of state is the agent of the limited liability partnership or foreign limited liability partnership on whom the process, notice, or demand may be served.
 - a. The return of the sheriff, or affidavit of a person not a party, that no registered agent or responsible person may be found at either the registered office or at the principal place of business ~~of the limited liability partnership~~ in this state is conclusive evidence that the limited liability partnership or foreign limited liability partnership has no registered agent or responsible person at its registered office or at its principal place of business in this state.
 - b. Service on the secretary of state of any process, notice, or demand is deemed personal service on the limited liability partnership or foreign limited liability partnership and may be made by filing with the secretary of state one original and two copies of the process, notice, or demand together with the fees provided in section 45-22-22.
 - c. The secretary of state immediately shall forward, by certified mail addressed to the limited liability partnership or foreign limited liability partnership at its registered office or at its principal place of business in this state, a copy of the process, notice, or demand.

- d. Service on the secretary of state is returnable in not less than thirty days, notwithstanding a shorter period specified in the process, notice, or demand.
3. The secretary of state shall maintain a record of every process, notice, and demand served on the secretary of state under this section, including the date of service and the action taken with reference to it.
4. This section does not limit the right of a person to serve process, notice, or demand required or permitted by law to be served on a limited liability partnership or foreign limited liability partnership in any other manner permitted by law.

SECTION 236. AMENDMENT. Section 45-22-18 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-18. Foreign limited liability partnership governing law. The laws of the jurisdiction under which a foreign limited liability partnership is originally registered govern its organization ~~and its~~, internal affairs, and the liability of partners for the debts, obligations, and liabilities of or chargeable to the partnership or another partner or partners. A foreign limited liability partnership may not be denied registration to transact business in this state by reason of any difference between those laws and the laws of this state. A foreign limited liability partnership holding a valid registration in this state has the same, but no greater, rights and privileges as a domestic limited liability partnership. The registration does not authorize the foreign limited liability partnership to exercise any of its powers for purposes that a domestic limited liability partnership is forbidden by law to exercise in this state.

SECTION 237. AMENDMENT. Section 45-22-20 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-20. Transaction of business by a foreign limited liability partnership without registration.

1. A foreign limited liability partnership transacting business in this state may not maintain any cause of action in any court of this state until the partnership has registered with the secretary of state.
2. The failure of a foreign limited liability partnership to register with the secretary of state does not impair the validity of any contract or act of the foreign limited liability partnership or prevent the foreign limited liability partnership from defending any claim for relief in any court of this state.
3. A foreign limited liability partnership, by transacting business in this state without having registered with the secretary of state, appoints the secretary of state as its agent upon whom any notice, process, or demand may be served.
4. ~~All persons who assume to act as a foreign limited liability partnership without registration are jointly and severally liable for all debts and liabilities incurred or arising in this state as a result.~~

SECTION 238. AMENDMENT. Section 45-22-22 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-22. Fees and charges.

1. The secretary of state shall charge and collect for:
 - a. Filing a registration as a domestic limited liability partnership, twenty-five dollars. When there are more than two managing partners, an additional three dollars must be paid for each additional managing partner not to exceed two hundred fifty dollars.
 - b. Filing a renewal registration, twenty-five dollars.
 - c. Late filing of a renewal registration after the lapse of a registration, twenty dollars. This fee is in addition to the renewal registration fee.
 - d. Filing a statement of correction, or amended registration, twenty-five dollars.
 - e. Filing an application to reserve a name, ten dollars.
 - f. Filing a notice of transfer of a reserved name, ten dollars.
 - g. Filing a cancellation of reserved name, ten dollars.
 - h. Filing a consent to use of name, ten dollars.
 - i. Filing a statement of change of address of registered office or change of registered agent or both, ten dollars.
 - j. Filing a statement of change of address of registered office by registered agent, ten dollars for each limited liability partnership or foreign limited liability partnership affected by such change.
 - k. Filing a registered agent's consent to serve in such capacity, ten dollars.
 - l. Filing a resignation as registered agent, ten dollars.
 - m. Filing a notice of withdrawal, ten dollars.
 - n. Filing a certificate of fact stating a merger of a foreign limited liability partnership registered with the secretary of state, fifty dollars.
 - o. Filing any other statement of a limited liability partnership, ten dollars.
 - p. Filing any process, notice, or demand for service, twenty-five dollars.
 - q. Filing a registration as a foreign limited liability partnership, fifty dollars.
2. The secretary of state shall charge and collect for:

- a. Furnishing a copy of any document, instrument, or paper relating to a limited liability partnership or foreign limited liability partnership, one dollar for every four pages, or fraction thereof.
- b. A certificate certifying a copy or reciting facts related to a limited liability partnership or foreign limited liability partnership, twenty dollars.
- c. Each page of any document or form sent by electronic transmission, one dollar.

SECTION 239. AMENDMENT. Section 45-22-23 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-23. Powers - Enforcement - Penalty - Appeal.

1. The secretary of state shall administer this chapter.
2. The secretary of state may propound to any limited liability partnership or foreign limited liability partnership subject to this chapter and to any partner, any interrogatory reasonably necessary and proper to ascertain whether the partnership has complied with this chapter.
 - a. Any interrogatory must be answered within thirty days after mailing, or within any additional time fixed by the secretary of state. The answers to the interrogatory must be full and complete and be made in writing and under oath.
 - b. If an interrogatory is directed:
 - (1) To an individual, it must be answered by that individual; or
 - (2) To a limited liability partnership or foreign limited liability partnership, it must be answered by a managing partner.
 - c. The secretary of state need not file any document to which an interrogatory relates until the interrogatory has been answered, and not then if the answers disclose that such document is not in conformity with this chapter.
 - d. The secretary of state shall certify to the attorney general, for any action the attorney general determines appropriate, any interrogatory and answers which disclose a violation of this chapter.
 - e. Each managing partner of a limited liability partnership or foreign limited liability partnership who fails or refuses within the time provided by this section to answer truthfully and fully every interrogatory propounded to that person by the secretary of state is guilty of an infraction.
 - f. Any interrogatory propounded by the secretary of state and the answers are not open to public inspection under section 44-04-18. The secretary of state may not disclose any facts or information obtained from an interrogatory except insofar as may be permitted by law or insofar as is required for evidence in any criminal proceedings or other action by this state.

3. If the secretary of state rejects any document required by this chapter to be approved by the secretary of state before the document may be filed, the secretary of state, within ten days after receipt of the document, shall give written notice of the rejection to the person who delivered the document, specifying the reasons for rejection. That person may appeal to the district court of the county in which the registered office of the limited liability partnership or foreign limited liability partnership is, or is proposed to be, situated by filing with the clerk of such court a petition setting forth a copy of the document sought to be filed and a copy of the written rejection of the document by the secretary of state. The court shall try the matter de novo. The court shall either sustain the action of the secretary of state or direct the secretary of state to take any action the court determines proper.
4. If the secretary of state revokes the registration of any foreign limited liability partnership; pursuant to section 45-22-16, the partnership may appeal to district court of the county where the registered office of the partnership in this state is situated by filing with the clerk of such court a petition setting forth a copy of its registration and a copy of the notice of revocation given by the secretary of state. The court shall try the matter de novo. The court shall either sustain the action of the secretary of state or direct the secretary of state to take any action the court determines proper.

SECTION 240. AMENDMENT. Section 45-22-24 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-24. Certificates and certified copies to be received in evidence.

1. All copies of documents filed in accordance with this chapter, when certified by the secretary of state, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts stated.
2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to limited liability partnerships or foreign limited liability partnerships which would not appear from a certified copy of any of the foregoing documents or certificates, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts stated.

SECTION 241. AMENDMENT. Section 45-22-25 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-25. Forms to be furnished by the secretary of state. All renewal registrations must be made on forms prescribed ~~and furnished~~ by the secretary of state. Upon request, the secretary of state ~~shall~~ may furnish forms for all other documents to be filed in the office of the secretary of state. However, the use of these documents, unless otherwise specifically required by law, is not mandatory.

SECTION 242. AMENDMENT. Section 45-22-26 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-26. Audit reports and audit of limited liability partnerships receiving state subsidies for production of alcohol or methanol for combination with gasoline.

Any limited liability partnership or foreign limited liability partnership that produces agricultural ethyl alcohol or methanol within this state and which receives a production subsidy from the state, whether in the form of reduced taxes or otherwise, shall submit an annual audit report, prepared by a certified public accountant based on an audit of all records and accounts of the limited liability partnership or foreign limited liability partnership, to the legislative audit and fiscal review committee. The audit must be submitted within ninety days of the close of the taxable year of the limited liability partnership or foreign limited liability partnership. Upon request of the legislative audit and fiscal review committee, the state auditor shall conduct an audit of the records and accounts of any limited liability partnership or foreign limited liability partnership required to submit an annual report under this section.

SECTION 243. AMENDMENT. Section 45-22-27 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-27. Foreign trade zones.

1. As used in this section, unless the context otherwise requires:
 - a. "Act of Congress" means the Act of Congress approved June 18, 1934, entitled an act to provide for the establishment, operation, and maintenance of foreign trade zones and ports of entry of the United States, to expedite and encourage foreign commerce and for other purposes, as amended, and commonly known as the Foreign Trade Zone Act of 1934 [48 Stat. 998; 19 U.S.C. 81a et seq.], as amended.
 - b. "Private limited liability partnership" means a limited liability partnership or foreign limited liability partnership, one of the purposes of which is to establish, operate, and maintain a foreign trade zone by itself or in conjunction with a public corporation.
 - c. "Public corporation" means this state, any political subdivision of this state, any public agency of this state or any political subdivision of this state, or any corporate instrumentality of this state.
2. Any private limited liability partnership or public corporation may apply to the proper authorities of the United States for a grant of the privilege of establishing, operating, and maintaining foreign trade zones and foreign trade subzones and to do all things necessary and proper to carry into effect the establishment, operation, and maintenance of such zones, in accordance with the Act of Congress and other applicable laws and rules.

SECTION 244. AMENDMENT. Section 57-38-07.1 of the North Dakota Century Code is amended and reenacted as follows:

57-38-07.1. Taxation of two or more member limited liability companies. For purposes of this chapter, a limited liability company having two or more members that is formed under either the laws of this state or under similar laws of another state, and that is considered to be a partnership for federal income tax purposes, is considered to be a partnership and the members must be considered to be partners. A limited liability company having two or more members that is not treated as a partnership for federal income tax purposes must be treated as a corporation for state tax purposes.

SECTION 245. Section 57-38-07.2 of the North Dakota Century Code is created and enacted as follows:

57-38-07.2. Taxation of single-member limited liability companies. For purposes of this chapter, a limited liability company having a single member that is formed under either the laws of this state or under similar laws of another state and that is considered to be a corporation for federal income tax purposes, is considered to be a corporation for state tax purposes. A limited liability company having a single member that is not treated as a corporation for federal income tax purposes is disregarded as an entity separate from its owner for state tax purposes.

SECTION 246. AMENDMENT. Section 57-38.1-17.2 of the North Dakota Century Code is amended and reenacted as follows:

57-38.1-17.2. Taxation of two or more member limited liability companies. For purposes of this chapter, a limited liability company having two or more members that is formed under either the laws of this state or under similar laws of another state, and that is considered to be a partnership for federal income tax purposes, is considered to be a partnership and the members must be considered to be partners. A limited liability company having two or more members that is not treated as a partnership for federal income tax purposes must be treated as a corporation for state tax purposes.

SECTION 247. Section 57-38.1-17.3 of the North Dakota Century Code is created and enacted as follows:

57-38.1-17.3. Taxation of single-member limited liability companies. For purposes of this chapter, a limited liability company having a single member that is formed under either the laws of this state or under similar laws of another state and that is considered to be a corporation for federal income tax purposes, is considered to be a corporation for state tax purposes. A limited liability company having a single member that is not treated as a corporation for federal income tax purposes is disregarded as an entity separate from its owner for state tax purposes.

SECTION 248. REPEAL. Sections 10-19.1-54, 10-19.1-73.1, 10-19.1-77, 10-19.1-78, 10-19.1-79, 10-19.1-80, chapters 10-22, 10-23, sections 10-32-41, 10-32-45, 10-32-46, 10-32-90, and 10-32-151 of the North Dakota Century Code are repealed.

Approved April 10, 1997
Filed April 10, 1997

CHAPTER 104

SENATE BILL NO. 2373 (Senator Mathern)

BANK INVESTMENT IN COMMUNITY DEVELOPMENT CORPORATIONS

AN ACT to create and enact a new chapter to title 10 of the North Dakota Century Code, relating to investment in community development corporations by banks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 10 of the North Dakota Century Code is created and enacted as follows:

Organization.

1. To the extent permitted by federal law, any three or more banks may form a community development corporation by complying with the conditions prescribed in this chapter and subscribing and acknowledging a certificate specifying:
 - a. The name, the general nature of its business, and the principal place of transacting its business. The name must distinguish the corporation from all other corporations authorized to do business in the state, and must contain the words "community development corporation".
 - b. The period of its duration, which is perpetual.
 - c. The name and principal business address of each incorporator.
 - d. The names and addresses of those composing its board until the first election.
 - e. The highest amount of indebtedness or liability to which the corporation may be subject.
2. The certificate may contain any other lawful provision defining the powers and business of the corporation, its officers, directors, members, and stockholders.
3. One bank may hold no more than forty-nine percent of the stock in the corporation.

Purposes. This chapter is intended to allow all banks, including state-chartered banks, the right to form community development corporations, as defined by the federal office of the comptroller of the currency and the federal reserve. The purpose of the corporation is to assist communities in this state in economic development, housing, the creation of jobs for low and moderate income

persons, and development of community facilities. A special emphasis is to be on rural communities.

Incorporation. Upon the filing of the articles of incorporation with the secretary of state, the secretary of state shall issue to the corporation over the great seal of the state a certificate that the articles containing the required documents have been filed in the secretary of state's office.

Powers of investment corporations. In furtherance of the purposes for which the corporation is organized, and in addition to the powers conferred by the general laws relating to business corporations, a corporation may:

1. Borrow money and otherwise incur indebtedness for any of the purposes of the corporation and issue its bonds, debentures, notes, or other evidences of indebtedness, whether secured or unsecured, therefor and secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights, and privileges of every kind and nature or any part thereof.
2. Lend money to, and guarantee, endorse, or act as surety on the bonds, notes, contracts, or other obligations of, or otherwise assist financially, any person, and establish and regulate the terms with respect to any loans or financial assistance and the charges for interest and service connected with the loans or assistance.
3. Purchase, receive, hold, lease, or otherwise acquire, and sell, convey, mortgage, lease, pledge, or otherwise dispose of, upon the terms and conditions as the board of directors determines advisable, property, together with the rights and privileges incidental thereto and the use thereof, including any property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations.
4. Acquire, by purchase or otherwise, the goodwill, business, rights, property, and other assets, or any part thereof, that may be in furtherance of the corporate purposes provided herein, and assume, undertake, guarantee, or pay the obligations, debts, and liabilities of any person; acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments or for the purpose of disposing of the real estate to others for the construction of industrial plants or other business establishments, and, in furtherance of the corporate purposes, acquire, construct, reconstruct, maintain, operate, sell, lease, or otherwise dispose of industrial plants or business establishments.
5. Acquire, subscribe for, own, hold, sell, or otherwise dispose of the stock, shares, membership interests, bonds, debentures, notes, or other securities and evidences of interest in, or indebtedness of, any person and, while the owner or holder thereof, to exercise all the rights, powers, and privileges of ownership, including the right to vote.
6. Cooperate with and avail itself of the facilities of the department of economic development and finance and any other similar governmental agencies; and cooperate with, assist, and otherwise encourage local organizations in the various communities of the state, the purpose of which are the promotion, assistance, and development of the business prosperity and economic welfare of the communities and of this state.

Board of directors.

1. All the corporate powers of the corporation must be exercised by a board of no fewer than fifteen elected directors who must be residents of this state. The number of directors and their term of office must be determined in the bylaws. If any vacancy occurs in the board of directors, the remaining directors may elect a person to fill the vacancy until the next annual meeting of the corporation.
2. The first board of directors shall adopt bylaws, which remain effective until amended or repealed by action of the board.
3. The first annual meeting must be held at a date to be fixed by the board of directors as soon as reasonably possible after a minimum of twenty-five percent of the capital stock of the corporation has been paid into its treasury. The annual meeting must be called in the manner provided by the bylaws.

Earned surplus. Each year, the corporation shall set apart all of its net earnings as retained earnings. The corporation shall hold part of the retained earnings as a reserve for bad debts. The corporation may use the rest of the retained earnings in the course of its business. The amount held as a reserve for bad debts must be at least the amount recommended by the firm of certified public accountants that the board of directors approves to audit the corporation's financial statements. The board shall establish procedures for investing funds held as a reserve for bad debts.

Obligation limitation. The total obligations of the corporation may not exceed twenty times the amount of the paid-in capital and surplus, not including earned surplus.

Deposit of funds - Loans. The corporation may not deposit any of its funds in any financial institution unless the institution has been designated as a depository by a vote of a majority of the directors, exclusive of any director who is an officer or director of the depository so designated. The corporation may not receive money on deposit. No loans may be made directly or indirectly to any officer of the corporation or to any firm of which the officer is a member or officer.

Preemptive right not authorized. The holders of capital stock as such have no preemptive or preferential right to purchase or subscribe for any part of the unissued capital stock of the corporation of any class or for any new issue of stock of any class, whether now or hereafter authorized or issued, or to purchase or subscribe for any bonds or other obligations, whether or not convertible into stock of any class of the corporation, now or hereafter authorized or issued.

Notes or obligations - Legal investments. Notwithstanding any other statute, the notes or other interest-bearing obligations of a state development corporation, issued in accordance with this chapter and the articles of incorporation and the bylaws of the corporation, are legal investments for any bank that becomes a member of the corporation.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 105

SENATE BILL NO. 2210

(Senator W. Stenehjem)
(Representative Kretschmar)

NONPROFIT CORPORATIONS

AN ACT to create and enact chapter 10-33 of the North Dakota Century Code, relating to nonprofit corporations; to amend and reenact subsection 2 of section 11-10-24, sections 14-03-09, 15-17-01, 18-05-01, 26.1-14-03, 26.1-17-11, subsection 2 of section 40-01-23, subsection 12 of section 49-23-01, subsection 8 of section 54-01.1-02, section 55-03-01, subsection 2 of section 61-16.1-60, and section 61-35-29 of the North Dakota Century Code, relating to references to the Nonprofit Corporations Act; to repeal chapters 10-24, 10-25, 10-26, 10-27, and 10-28 of the North Dakota Century Code, relating to the Nonprofit Corporations Act; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 10-33 of the North Dakota Century Code is created and enacted as follows:

10-33-01. Definitions. For the purposes of this chapter, unless the context otherwise requires:

1. "Address" means:
 - a. In the case of a registered office or principal executive office, the mailing address, including a zip code, of the actual office location which may not be only a post-office box; and
 - b. In any other case, the mailing address, including a zip code.
2. "Articles" means:
 - a. In the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a statement of change of registered office, registered agent, or name of registered agent, articles of merger, articles of consolidation, articles of abandonment, articles of dissolution, and any annual report in which a registered office or registered agent has been established or changed.
 - b. In the case of a foreign corporation, the term includes all documents serving a similar function required to be filed with the secretary of state or other officer of the corporation's state of incorporation.
3. "Board" means the board of directors of a corporation.
4. "Board member" means an individual serving on the board.

5. "Bylaws" means the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how designated.
6. "Corporation" means a corporation, other than a foreign corporation, that is incorporated under or governed by this chapter.
7. "Director" means a member of the board.
8. "Filed with the secretary of state" means:
 - a. The following have been delivered to the secretary of state and have been determined by the secretary of state to conform to law:
 - (1) A signed original, or a legible facsimile copy of a signed original, of a request for reserved name; or a signed original of all other documents, meeting the applicable requirements of this chapter; and
 - (2) The fees provided for in section 10-33-140;
 - b. And the secretary of state has:
 - (1) Endorsed on the original the word "filed", and the month, day, and year; and
 - (2) Recorded the document in the office of the secretary of state.
9. "Foreign corporation" means a corporation that is formed under laws other than the laws of this state for a purpose for which a corporation may be organized under this chapter.
10. "Good faith" means honesty in fact in the conduct of an act or transaction.
11. "Intentionally" means the person referred to has a purpose to do or fail to do the act or cause the result specified, or believes the act or failure to act, if successful, will cause that result. A person intentionally violates a statute:
 - a. If the person intentionally does the act or causes the result prohibited by the statute; or
 - b. If the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.
12. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time, and successive federal revenue acts.
13. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A person does not "know" or have "knowledge" of a fact merely because the person has reason to know of the fact.
14. "Legal representative" means a person empowered to act for another person, including an agent, manager, officer, partner, or associate of an

organization; a trustee of a trust; a personal representative; a trustee in bankruptcy; or a receiver, guardian, custodian, or conservator.

15. "Member" means a person with membership rights in a corporation under its articles or bylaws, regardless of how the person is identified.
16. "Members with voting rights" means members or a class of members that has voting rights with respect to the purpose or matter involved.
17. "Nonprofit purpose" or "nonprofit activity" means a purpose or activity not involving pecuniary gain to any officer, director, or member, other than a member that is a nonprofit organization or subdivision, unit, or agency of the United States or a state or local government.
18. "Notice":

 - a. Is given by a member of a corporation to the corporation or an officer of the corporation when in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation; and
 - b. In all other cases, is given to a person:

 - (1) When mailed to the person at an address designated by the person or at the last known address of the person;
 - (2) When handed to the person; or
 - (3) When left at the office of the person with a clerk or other person in charge of the office; or

 - (a) If there is no one in charge, when left in a conspicuous place in the office; or
 - (b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing therein.
 - c. Is given by mail when deposited in the United States mail with sufficient postage affixed.
 - d. Is deemed received when it is given.
19. "Officer" means an individual who is more than eighteen years of age and who is:

 - a. Elected, appointed, or otherwise designated as an officer by the board or the members; or
 - b. Considered elected as an officer pursuant to section 10-33-52.
20. "Organization" means a corporation, whether domestic or foreign, incorporated in or authorized to do business in this state under another chapter of this code; limited liability company; partnership; limited partnership; limited liability partnership; joint venture; association;

business trust; estate; trust; enterprise; or any other legal or commercial entity.

21. "Principal executive office" means:

- a. If the corporation has an elected or appointed president, then an office where the elected or appointed president of the corporation has an office; or
- b. If the corporation has no elected or appointed president, then the registered office of the corporation.

22. "Registered office" means the place in this state designated in the articles of a corporation as the registered office of the corporation.

23. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:

- a. Owns, directly or indirectly, at least fifty percent of the shares, membership interests, or other ownership interests of another organization;
- b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or more of the voting members of the governing body of another organization; or
- c. Has the power, directly or indirectly, to direct or cause the direction of the management and policies of another organization, whether through the ownership of voting interests, by contract, or otherwise.

24. "Signed" means that the signature of a person is placed on a document, as provided in subsection 39 of section 41-01-11, and:

- a. With respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter, the articles, the bylaws, a resolution approved by the affirmative vote of the required proportion or number of the directors, or the required proportion or number of members with voting rights, if any; and
- b. With respect to a document that is not required by this chapter to be filed with the secretary of state, the signature may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on the document.

25. "Subsidiary" of a specified corporation means:

- a. A corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly or indirectly through related corporations or limited liability companies, by the specified corporation; or
- b. A limited liability company having more than fifty percent of the voting power of its membership interests entitled to vote for governors owned directly, or indirectly through related limited

liability companies or corporations, by the specified limited liability company.

26. "Surviving corporation" means the domestic or foreign corporation resulting from a merger.
27. "Vote" includes authorization by written action.
28. "Written action" means:
- a. A written document signed by all of the persons required to take the action; or
 - b. The counterparts of a written document signed by any of the persons taking the action. Each counterpart constitutes the action of the persons signing it, and all the counterparts are one written action by all of the persons signing them.

10-33-02. Application and election.

1. This chapter applies to all nonprofit corporations incorporated for a purpose for which a corporation might be incorporated under this chapter.
2. A corporation in existence before August 1, 1997, which has incorporated under chapters 10-24, 10-25, 10-26, 10-27, and 10-28 as they existed on July 31, 1997, or any other chapter that provides that corporations incorporated under that chapter and governed by the nonprofit corporation laws of this state, may elect after July 31, 1997, and before August 1, 1998, to become governed by this chapter.
 - a. If the articles of an electing corporation include a provision prohibited by this chapter or omit a provision required by this chapter or are otherwise inconsistent with this chapter, the electing corporation shall amend its articles to conform to the requirements of this chapter. The appropriate provisions of the corporation's articles or bylaws or the law by which it was governed before the effective date of the election made pursuant to this section control the manner of adoption of the amendment.
 - b. An election by a corporation to become governed by this chapter must be made by resolution approved by the affirmative vote of the members with voting rights of the same proportion that is required for amendment of the articles of the corporation before the election.
 - (1) If there are no members with voting rights, the corporation must elect to be governed by this chapter by a resolution adopted by a majority vote of the directors entitled to vote at a meeting of the board, with proper notice given. The notice must include a statement that a purpose of the meeting is to consider an election to become governed by this chapter.
 - (2) The original of the resolution, and articles of amendment if required, must be filed with the secretary of state.

- (a) The resolution and articles of amendment become effective upon acceptance by the secretary of state.
 - (b) If no amendment of the articles is required, the resolution must state that the articles of the corporation conform to the requirements of this chapter.
 - c. Upon filing an election pursuant to this section, all provisions of the bylaws that are consistent with this chapter remain or become effective and all provisions of the bylaws that are inconsistent with this chapter cease to be effective.
3. After July 31, 1998, this chapter applies to all existing corporations incorporated under any chapter of this code providing for the incorporation of corporations for a purpose or purposes for which a corporation might be incorporated under this chapter or which are otherwise to be governed by the nonprofit corporation laws of this state.
- a. All provisions of the articles and bylaws of the corporation which may be included in the articles or bylaws under this chapter remain in effect, and all provisions of the articles and bylaws of the corporation which are inconsistent with this chapter cease to be effective on August 1, 1998.
 - b. Any provisions required by this chapter to be contained in the articles that do not appear in the articles are read into them as a matter of law.

10-33-03. Transition. The continuation or completion of any act by a corporation that has not incorporated under, but has become governed by, this chapter, and the continuation or performance of any executed or wholly or partially executory contract, conveyance, or transfer to or by the corporation, if otherwise lawful before the corporation became governed by this chapter, remains valid, and may be continued, completed, consummated, enforced, or terminated as required or permitted by a statute applicable prior to the date on which the corporation became governed by this chapter.

10-33-04. Purposes.

- 1. Unless otherwise limited in its articles, a corporation has a general purpose of engaging in any lawful nonprofit activity.
- 2. A corporation may be incorporated under this chapter for any lawful nonprofit purpose, unless another statute requires incorporation under a different law. A corporation of this type engaging in conduct that is regulated by another statute is subject to the limitations of the other statute, except it may not:
 - a. Be formed for a purpose involving pecuniary gain to its members, other than to members that are nonprofit organizations, subdivisions, units, or agencies of the United States, a state, or a local government; or
 - b. Pay dividends or other pecuniary remuneration, directly or indirectly, to its members, excluding members that are nonprofit

organizations or subdivisions, units, or agencies of the United States, a state, or a local government.

10-33-05. Incorporators. One or more individuals age eighteen or more may act as incorporators of a corporation by filing with the secretary of state articles of incorporation for the corporation.

10-33-06. Articles.

1. The articles of incorporation must contain:
 - a. The name of the corporation;
 - b. The address of the registered office of the corporation and the name of its registered agent at that address;
 - c. The name and address of each incorporator;
 - d. The effective date of the incorporation:
 - (1) If a later date than that on which the certificate of incorporation is issued by the secretary of state; and
 - (2) Which may not be later than ninety days after the date on which the certificate of incorporation is issued; and
 - e. A statement that the corporation is incorporated under this chapter.
2. The articles of incorporation may not contain:
 - a. Any provision limiting the right of cumulative voting as guaranteed by section 6 of article XII of the Constitution of North Dakota.
 - b. Any provision authorizing the issuance of stocks or bonds in violation of section 9 of article XII of the Constitution of North Dakota.
3. The following articles govern a corporation unless modified by the articles:
 - a. A corporation has a general purpose of engaging in any lawful nonprofit activity as provided in section 10-33-04;
 - b. A corporation has perpetual existence and certain powers as provided in section 10-33-21;
 - c. The power to initially adopt, amend, or repeal the bylaws is vested in the board as provided in section 10-33-26;
 - d. The affirmative vote of a majority of the directors present is required for an action of the board as provided in section 10-33-42;
 - e. A written action by the board taken without a meeting must be signed by all directors as provided in section 10-33-43; and
 - f. Members are of one class as provided in section 10-33-57.

4. The following provisions govern a corporation unless modified either in the articles or bylaws:
 - a. A certain method must be used for amending the articles as provided in section 10-33-15;
 - b. Certain procedures apply to the adoption, amendment, or repeal of bylaws by the members as provided in section 10-33-26;
 - c. A director holds office for an indefinite term that expires upon the election of a successor as provided in section 10-33-30;
 - d. The term of a director filling a vacancy expires at the end of the term the director is filling as provided in section 10-33-30;
 - e. The compensation of directors is fixed by the board as provided in section 10-33-32;
 - f. The method provided in section 10-33-36 or 10-33-37 must be used for removal of directors;
 - g. The method provided in section 10-33-38 must be used for filling board vacancies;
 - h. Board meetings must be held at least once per year and if the board fails to select a place for a board meeting, it must be held at the principal executive office as provided in subsection 1 of section 10-33-39;
 - i. A director may call a board meeting, and the notice of the meeting need not state the purpose of the meeting as provided in subsection 3 of section 10-33-39;
 - j. A majority of the board is a quorum as provided in section 10-33-41;
 - k. The affirmative vote of the majority of directors present is required for board action as provided in section 10-33-42;
 - l. A committee consists on one or more persons, who need not be directors, appointed by the board as provided in section 10-33-44;
 - m. Unless the articles or bylaws or a resolution adopted by the board, and not inconsistent with the articles or bylaws, provides otherwise, the officers shall have the duties provided in section 10-33-50;
 - n. The method provided in section 10-33-54 must be used for removal of officers;
 - o. If not prohibited by the board from doing so, officers may delegate some or all of their duties and powers as provided in section 10-33-55;
 - p. A corporation does not have members as provided in section 10-33-57;

- q. The board may determine the consideration required to admit members as provided in section 10-33-57;
 - r. All members are entitled to vote and have equal rights and preferences in matters as provided in section 10-33-57;
 - s. Memberships are nontransferable except as provided in section 10-33-59;
 - t. A corporation with voting members must hold a regular meeting of voting members annually as provided in section 10-33-65;
 - u. If a specific minimum notice period has not been fixed by law, then at least five days' notice is required for a meeting of members as provided in section 10-33-68;
 - v. The board may fix a date up to fifty days before the date of a members' meeting as the date for determination of the members entitled to notice of and entitled to vote at the meeting as provided in section 10-33-68;
 - w. Each member has one vote as provided in section 10-33-71;
 - x. The affirmative vote of the majority of members with voting rights present and entitled to vote is required for action of the members, unless this chapter or the articles or bylaws require a greater vote or voting by class as provided in section 10-33-72;
 - y. Members may take action at a meeting by voice or ballot, by unanimous action without a meeting, by mailed ballot, or by electronic communication as provided in section 10-33-72;
 - z. The number of members required for a quorum is ten percent of the members entitled to vote as provided in section 10-33-76;
 - aa. The procedures provided in section 10-33-78 govern acceptance of member acts; and
 - bb. Indemnification of certain persons is required as provided in section 10-33-84.
5. The following provisions relating to the management or regulation of the affairs of a corporation may be included in the articles or, except for naming members of the first board, in the bylaws:
- a. The first board of directors may be named in the articles as provided in section 10-33-25;
 - b. Additional qualifications for directors may be imposed as provided in section 10-33-29;
 - c. Terms of directors may be staggered as provided in section 10-33-30;
 - d. The date, time, and place of board meetings may be fixed as provided in section 10-33-39;

- e. Additional officers may be designated as provided in section 10-33-49;
 - f. Additional powers, rights, duties, and responsibilities may be given to officers as provided in section 10-33-50;
 - g. A method for filling vacant offices may be specified as provided in section 10-33-54;
 - h. Membership criteria and procedures for admission may be established as provided in section 10-33-57;
 - i. Membership terms may be fixed as provided in section 10-33-57;
 - j. A corporation may issue membership certificates, or preferred or common shares as the board deems appropriate as provided in section 10-31-58;
 - k. A corporation may levy dues, assessments, or fees on members as provided in section 10-33-60;
 - l. A corporation may buy memberships as provided in section 10-33-63;
 - m. A corporation may have delegates with some or all the authority of members as provided in section 10-33-64;
 - n. The date, time, and place of regular member meetings or the place of special meetings may be fixed as provided in section 10-33-65;
 - o. Certain persons may be authorized to call special meetings of members as provided in section 10-33-66;
 - p. Notices of special member meetings may be required to contain certain information as provided in section 10-33-68;
 - q. A larger than majority vote may be required for member action as provided in section 10-33-72;
 - r. Members may vote by proxy as provided in section 10-33-77; and
 - s. Members may enter into voting agreements as provided in section 10-33-79.
6. The articles may contain other provisions consistent with law relating to the management or regulation of the affairs of the corporation.
7. It is not necessary to state the corporate powers granted by this chapter in the articles.
8. If there is a conflict between subdivision 3, 4, or 5 and another section of this chapter, the other section controls.

10-33-07. Private foundations - Provisions considered contained in articles.

1. The articles of incorporation of a corporation that is a private foundation as defined in section 509(a) of the Internal Revenue Code and an instrument governing the use, retention, or disposition by the corporation of its income or property must contain the provisions contained in this section. If the articles and instrument do not contain these provisions, they are considered to have incorporated the language in subdivisions a through e with the same effect as though the language was set forth verbatim. Except as provided in subsection 2, these provisions govern the corporation as to the use, retention, and disposition of its income and property regardless of provisions of the articles or instrument or other law of this state to the contrary:

 - a. The corporation shall distribute for each of its taxable years amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code;
 - b. The corporation may not engage in an act of "self-dealing" as defined in section 4941(d) of the Internal Revenue Code that would give rise to liability for the tax imposed by section 4941(a) of the Internal Revenue Code;
 - c. The corporation may not retain "excess business holdings" as defined in section 4943(c) of the Internal Revenue Code that would give rise to liability for the tax imposed by section 4943(a) of the Internal Revenue Code;
 - d. The corporation may not make investments that would jeopardize the carrying out of the exempt purposes of the corporation, within the meaning of section 4944 of the Internal Revenue Code, so as to give rise to liability for the tax imposed by section 4944(a) of the Internal Revenue Code; and
 - e. The corporation may not make a "taxable expenditure" as defined in section 4945(d) of the Internal Revenue Code that would give rise to liability for the tax imposed by section 4945(a) of the Internal Revenue Code.
2. Subsection 1 does not apply to a corporation if a court of competent jurisdiction determines that the application would be contrary to the terms of an instrument described in subsection 1 and that the instrument may not properly be changed to conform to subsection 1.
3. A reference in subsection 1 to a particular section of the Internal Revenue Code includes the corresponding provision of a future United States internal revenue law.
4. This section applies to all corporations that could be governed by this chapter, notwithstanding section 10-33-02.
5. This section does not impair the rights and powers of the attorney general or the courts of this state with respect to a corporation.

10-33-08. Filing of articles of incorporation. An original of the articles of incorporation must be filed with the secretary of state. If the secretary of state finds that the articles of incorporation conform and all fees have been paid under section

10-33-140, the secretary of state shall issue a certificate of incorporation to the incorporators or their representative.

10-33-09. Effective date of incorporation. The corporate existence begins upon the issuance of the certificate of incorporation or at a later date as specified in the articles of incorporation. The certificate of incorporation is conclusive evidence that all conditions precedent and required to be performed by the incorporators have been performed and that the corporation has been incorporated under this chapter, except as against this state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

10-33-10. Corporate name.

1. The corporate name:

- a. Must be in the English language or in any other language expressed in English letters or characters.**
- b. Need not contain the word "company", "corporation", "incorporated", "limited", or an abbreviation of one or more of these words.**
- c. May not contain a word or phrase that indicates or implies that it may not be incorporated under this chapter.**
- d. May not contain a word or phrase that indicates or implies that it is incorporated for a purpose other than a legal nonprofit purpose for which a corporation may be incorporated under this chapter.**
- e. Unless a document in compliance with subsection 2 of this section is filed with the articles, may not be the same as or deceptively similar to:**
 - (1) The name, whether foreign and authorized to do business in this state, or domestic of:**
 - (a) Another corporation;**
 - (b) A corporation incorporated or authorized to do business in this state under another provision of this code;**
 - (c) A limited liability company;**
 - (d) A limited partnership; or**
 - (e) A limited liability partnership.**
 - (2) A name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;**
 - (3) A fictitious name registered in the manner provided in chapter 45-11; or**

- (4) A trade name registered in the manner provided in chapter 47-25.
2. If the secretary of state determines that a corporate name is "deceptively similar" to another name for purposes of this chapter, then the corporate name may not be used unless there is filed with the articles:
 - a. The written consent of the holder of the rights to the name the proposed name is determined to be deceptively similar to; or
 - b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.

This subsection does not affect the right of a domestic corporation existing on the effective date of this Act, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.
3. The secretary of state shall determine whether a corporate name is "deceptively similar" to another name for purposes of this chapter.
4. This section and section 10-33-11 do not:
 - a. Abrogate or limit:
 - (1) The law of unfair competition or unfair practices;
 - (2) Chapter 47-25;
 - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks; or
 - (4) Any other rights to the exclusive use of names or symbols; or
 - b. Derogate the common law or the principles of equity.
5. A corporation that is merged with another domestic or foreign corporation, or that is incorporated by the reorganization of one or more domestic or foreign corporations, or that acquires by sale, lease, or other disposition to or exchange with a domestic corporation all or substantially all of the assets of another domestic or foreign corporation including its name, may have the same name as that used in this state by any of the other corporations, if the other corporation was incorporated under the laws of, or is authorized to conduct activities in, this state.
6. The use of a name by a corporation in violation of this section does not affect or vitiate its corporate existence, but a court in this state may, upon application of the state or of an interested or affected person, enjoin the corporation from doing business under a name assumed in violation of this section, although its articles may have been filed with the secretary of state and a certificate of incorporation issued.
7. If a corporation's period of existence has expired or is involuntarily dissolved by the secretary of state pursuant to section 10-33-139, the corporation may reacquire the right to use that name by refiling articles

of incorporation pursuant to section 10-33-08; amending pursuant to section 10-33-118; or reinstating pursuant to section 10-33-139. If the name has been adopted for use or reserved by another person, the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 2. A corporation that cannot reacquire the use of its corporate name must adopt a new corporate name that complies with the provisions of this section.

10-33-11. Reserved name.

1. The exclusive right to the use of a corporate name otherwise permitted by section 10-33-10 may be reserved by any person.
2. The reservation must be made by filing with the secretary of state a request that the name be reserved, together with the fees provided in section 10-33-140:
 - a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.
 - b. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a corporate name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee, together with the fees provided in section 10-33-140.
4. The right to the exclusive use of a corporate name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the cancellation, together with the fees provided in section 10-33-140.
5. The secretary of state may accept for filing a legible facsimile copy of the signed original of any request for reserved name.
6. The secretary of state may destroy all reserved name requests and index thereof one year after expiration.

10-33-12. Registered office - Registered agent.

1. A corporation shall continuously maintain a registered office in this state. A registered office need not be the same as the principal place of business or the principal executive office of the corporation.
2. A corporation shall appoint and continuously maintain a registered agent. The registered agent may be an individual residing in this state, a domestic corporation whether incorporated under this chapter or under another provision of this code, a limited liability company, a foreign corporation whether authorized to do business or conduct activities in the state under this chapter or under another provision of this code, or foreign limited liability company authorized to conduct activities in this state. The registered agent shall maintain a business office that is identical with the registered office. Proof of the registered agent's

consent to serve in that capacity must be filed with the secretary of state, together with the fees provided in section 10-33-140.

10-33-13. Establishment or change of registered office - Appointment or change of registered agent - Change of name of registered agent.

1. A corporation may establish or change its registered office, designate or change its registered agent, or state a change in the name of its registered agent by filing with the secretary of state, along with the fees provided in section 10-33-140, a statement containing:
 - a. The name of the corporation.
 - b. The new address of its registered office if the address of its registered office is to be established or changed.
 - c. The name of its new registered agent if its registered agent is to be designated or changed.
 - d. The name of its registered agent as changed if the name of its registered agent is to be changed.
 - e. A statement that the address of its registered office and the address of the business office of its registered agent, as established or changed, will be identical.
 - f. A statement that the establishment or change of registered office or designation or change of registered agent is authorized by resolution approved by the board.
2. A registered agent of a corporation may resign by filing with the secretary of state a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the corporation at its principal executive office or to a legal representative of the corporation. The appointment of the agent terminates thirty days after the notice is filed with the secretary of state.
3. If the business address or the name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent of each corporation represented by that agent by filing with the secretary of state a statement for each corporation as required in subsection 1, except that it need be signed only by the registered agent, need not be responsive to subdivision f, and must state that a copy of the statement has been mailed to each of those corporations or to the legal representative of each of those corporations.
4. The fee prescribed in section 10-33-140 for change of registered office must be refunded when in the secretary of state's opinion a change of address of registered office results from rezoning or postal reassignment. The fee prescribed in section 10-33-140 does not apply when the registered agent or registered office is established or changed in the annual report.

10-33-14. Amendment of articles. The articles of a corporation may be amended at any time to include or modify any provision that is required or permitted to appear in the articles or to omit any provision not required to be

included in the articles, except that when articles are amended to restate them, the name and address of each incorporator and each initial director may be omitted. Unless otherwise provided in this chapter, the articles may be amended or modified only in accordance with section 10-33-15.

10-33-15. Procedure for amendment of articles.

1. A majority of incorporators may amend the articles by written action if no directors are named in the original articles, if no directors have been elected, and if there are no members with voting rights. A majority of directors may amend the articles if there are no members with voting rights, if members with voting rights have authorized the board to amend the articles under subsection 3, or if the amendment merely restates the existing articles, as amended. Notice of the meeting and of the proposed amendment must be given to the board. An amendment restating the existing articles may, but need not, be submitted to and approved by the members as provided in subsection 2.
2. Amendments to the articles must be approved by a majority of the directors and by the members with voting rights. If an amendment is initiated by the directors, proper notice of the proposed amendment must precede a member meeting at which the amendment will be considered and must include the substance of the proposed amendment. If an amendment is proposed and approved by the members, the members may demand a special board meeting within fifty days for consideration of the proposed amendment if a regular board meeting would not occur within fifty days.
3. a. The members with voting rights may authorize the board of directors, subject to subdivision c, to exercise from time to time the power of amendment of the articles without member approval.
b. When the members have authorized the board of directors to amend the articles, the board of directors, by a majority vote, unless the articles, bylaws, or the members' resolution authorizing the board action requires a greater vote, may amend the articles at a meeting of the board. Notice of the meeting and of the proposed amendment must be given to the board.
c. The members with voting rights voting at a meeting duly called for the purpose may prospectively revoke the authority of the board to exercise the power of the members to amend the articles.
4. Articles or bylaws may require greater than majority approval by the board or approval by greater than a majority of a quorum of the voting members for an action under this section and may limit or prohibit the use of mail ballots by voting members.
5. The articles or bylaws may provide that an amendment also must be approved by the members of a class.

10-33-16. Articles of amendment. When an amendment has been adopted, articles of amendment must be prepared that contain:

1. The name of the corporation.

2. The amendment adopted.
3. The date of the adoption of the amendment pursuant to this chapter.
4. If the amendment restates the articles in their entirety, a statement that the restated articles supersede the original articles and all amendments to them.
5. A statement that the amendment has been adopted pursuant to this chapter.

10-33-17. Effect of amendment.

1. An amendment does not affect an existing cause of action in favor of or against the corporation, nor a pending suit to which the corporation is a party, nor the existing rights of persons other than members.
2. If the corporate name is changed by the amendment, a suit brought by or against the corporation under its former name does not abate for that reason.
3. When effective under section 10-33-19, an amendment restating the articles in their entirety supersedes the original articles and all amendments to the original articles.

10-33-18. Filing articles of amendment. An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to the filing requirements of this chapter and that all fees have been paid as provided in section 10-33-140, then the articles of amendment must be recorded in the office of the secretary of state.

10-33-19. Effective date of articles of amendment. The articles of amendment are effective upon acceptance by the secretary of state or at another time within thirty days after acceptance if the articles of amendment so provide.

10-33-20. Amendment of articles in court-supervised reorganization.

1. Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of the corporation, pursuant to the provisions of any applicable statute of the United States relating to reorganization of corporations, the articles may be amended, in the manner provided in this section, in as many respects as may be necessary to carry out the plan, so long as the articles as amended contain only provisions which might be lawfully contained in original articles at the time of making the amendment. In particular, and without limitation upon any general power of amendment, the articles may be amended to:
 - a. Change the corporate name, period of duration, or corporate purposes of the corporation.
 - b. Repeal, alter, or amend the bylaws of the corporation.
 - c. Change the aggregate number of shares, or shares of any class, which the corporation has the authority to issue.

- d. Change the preferences, limitations, relative rights in respect of all or any part of the shares of the corporation, and classify, reclassify, or cancel all or any part thereof, whether issued or unissued.
 - e. Authorize the issuance of bonds, debentures, or other obligations of the corporation, whether convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof.
 - f. Constitute or reconstitute and classify or reclassify the board and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.
2. Amendments to the articles pursuant to subsection 1 must be made in the following manner:
 - a. Articles of amendment approved by decree or order of the court must be executed and verified by the person or persons designated or appointed by the court for that purpose and must set forth the name of the corporation, the amendments of the articles approved by the court, the date of the decree or order approving the articles of amendment, and the title of the proceedings in which the decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation under the provisions of an applicable statute of the United States.
 - b. An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to the filing requirements of this chapter and that all fees have been paid as provided in section 10-33-140, the original must be recorded in the office of the secretary of state.
 3. The articles of amendment become effective upon their acceptance by the secretary of state or at another time within thirty days after acceptance if the articles of amendment so provide.
 4. The articles are amended accordingly with the same effect as if the amendment had been adopted by unanimous action of the directors and members.

10-33-21. General powers.

1. A corporation has the powers set forth in this section, subject to any limitations provided in any other statute of this state or in its articles.
2. A corporation has perpetual duration.
3. A corporation may sue and be sued, complain and defend and participate as a party or otherwise in any legal, administrative, or arbitration proceeding, in its corporate name.
4. A corporation may purchase, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest in property, wherever situated.

5. A corporation may sell, convey, mortgage, create a security interest in, lease, exchange, transfer, or otherwise dispose of all or any part of its real or personal property, or any interest in property, wherever situated.
6. A corporation may purchase, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, exchange, mortgage, lend, create a security interest in, or otherwise dispose of, use and deal in and with, securities or other interests in, or obligations of, a person or direct or indirect obligations of any domestic or foreign government or instrumentality.
7. A corporation may make contracts and incur liabilities, borrow money, issue its securities, and secure any of its obligations by mortgage of or creation of a security interest in all or any of its property, franchises, and income.
8. A corporation may invest and reinvest its funds.
9. A corporation may take and hold real and personal property, whether or not of a kind sold or otherwise dealt in by the corporation, as security for the payment of money loaned, advanced, or invested.
10. A corporation may conduct its business, carry on its operations, have offices, and exercise the powers granted by this chapter anywhere in the universe.
11. Except as otherwise prohibited by law, a corporation may make donations, irrespective of corporate benefit, for:
 - a. The public welfare;
 - b. Social, community, charitable, religious, educational, scientific, civic, literary, and testing for public safety purposes, and for similar or related purposes;
 - c. The purpose of fostering national or international amateur sports competition; and
 - d. The prevention of cruelty to children and animals, and for similar or related purposes.
12. A corporation may pay pensions, retirement allowances, and compensation for past services and establish employee or incentive benefit plans, trusts, and provisions for the benefit of the corporation and the corporation's related organizations' officers, managers, directors, governors, employees, and agents and, in the case of a related organization that is a limited liability company, members who provide services to the limited liability company, and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.
13. A corporation may participate in any capacity in the promotion, organization, ownership, management, and operation of any organization or in any transaction, undertaking, or arrangement that the participating corporation would have power to conduct by itself, whether or not the participation involves sharing or delegation of control.

14. A corporation may provide for its benefit life insurance and other insurance with respect to the services of its officers, directors, employees, and agents, or on the life of a member for the purpose of acquiring, at the death of the member, any membership interests in the corporation owned by the member.
15. A corporation may have, alter at pleasure, and use a corporate seal as provided in section 10-33-22.
16. A corporation may adopt, amend, and repeal bylaws relating to the management of the business or the regulation of the affairs of the corporation as provided in section 10-33-26.
17. A corporation may establish committees of the board of directors, elect or appoint persons to the committees, and define their duties as provided in section 10-33-44 and fix their compensation.
18. A corporation may elect or appoint officers, employees, and agents of the corporation, and define their duties and fix their compensation.
19. A corporation may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist persons as provided in section 10-33-82.
20. A corporation may make advances to its directors, officers, and employees and those of its subsidiaries as provided in section 10-33-83.
21. A corporation shall indemnify those persons identified in section 10-33-84 against certain expenses and liabilities only as provided in section 10-33-84 and may indemnify other persons.
22. A corporation may conduct all or part of its business under one or more trade names as provided in chapter 47-25.
23. A corporation may take, receive, and hold real and personal property, including the principal and interest of money or other fund, that is given, conveyed, bequeathed, devised to, or vested in the corporation in trust where the corporation or a related organization has a vested or contingent interest in the trust.
24. Except where the trust instrument prescribes otherwise, a corporation may invest trust property or its proceeds in accordance with section 59-02-08.
25. A corporation may be a member of or the owner of the ownership interest in another domestic or foreign organization.
26. A corporation may dissolve and wind up.
27. A corporation may merge and consolidate with other domestic or foreign nonprofit corporations organized for related purposes.
28. A corporation doing business as a hospital may merge with a corporation incorporated for profit and form a corporation under this chapter.

29. A corporation may acquire an owner's interest in another organization.

30. A corporation may have and exercise all other powers necessary or convenient to effect any or all of the purposes for which the corporation is incorporated.

10-33-22. Corporate seal. A corporation may, but need not, have a corporate seal. The use or nonuse of a corporate seal does not affect the validity, recordability, or enforceability of a document or act. If a corporation has a corporate seal, the use of the seal by the corporation on a document is not necessary.

10-33-23. Defense of ultra vires. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation is invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer but such lack of capacity or power may be asserted:

1. In a proceeding by a member against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfers sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, may set aside and enjoin the performance of the contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of the contract. However, anticipated profits to be derived from the performance of the contract may not be awarded by the court as a loss or damage sustained.
2. In a proceeding by the corporation, whether acting directly or through a receiver, trustee or other legal representative, or through members in a representative suit, against the incumbent or former officers or directors of the corporation.
3. In a proceeding by the attorney general, as provided in this chapter, to dissolve the corporation or to enjoin the corporation from the transaction of unauthorized business.

10-33-24. Unauthorized assumption of corporate powers - Liability. All persons who assume to act as a corporation without authority are jointly and severally liable for all debts and liabilities incurred or arising as a result.

10-33-25. Organization.

1. If the first board is not named in the articles, the incorporators may elect the first board or may act as directors with all of the powers, rights, duties, and liabilities of directors, until directors are elected.
2. After the issuance of the certificate of incorporation, the incorporators or the directors named in the articles shall, within a reasonable time, either hold an organizational meeting at the call of a majority of the incorporators or of the directors named in the articles, or take written

action, for the purposes of transacting business and taking actions necessary or appropriate to complete the organization of the corporation. If a meeting is held, the person or persons calling the meeting shall give at least three days' notice of the meeting to each incorporator or director named, stating the date, time, and place of the meeting. Incorporators and directors may waive notice of an organizational meeting in the same manner that a director may waive notice of meetings of the board pursuant to subsection 5 of section 10-33-39.

10-33-26. Bylaws.

1. A corporation may, but need not, have bylaws. Bylaws may contain any provision relating to the management or regulation of the affairs of the corporation consistent with law or the articles, including:
 - a. The number of directors, and the qualifications, manner of election, powers, duties, and compensation, if any, of directors;
 - b. The qualifications of members;
 - c. Different classes of membership;
 - d. The manner of admission, withdrawal, suspension, and expulsion of members;
 - e. Property, voting, and other rights and privileges of members;
 - f. The appointment and authority of committees;
 - g. The appointment or election, duties, compensation, and tenure of officers;
 - h. The time, place, and manner of calling, conducting, and giving notice of member, board, and committee meetings, or of conducting mail ballots;
 - i. The making of reports and financial statements to members; or
 - j. The number establishing a quorum for meetings of members and the board.

2. Initial bylaws may be adopted by the incorporators or by the first board pursuant to section 10-33-25. Unless reserved by the articles to the members, the power to adopt, amend, or repeal the bylaws is vested in the board. The power of the board is subject to the power of the members with voting rights exercisable in the manner provided in subsection 3 to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board. After the adoption of the initial bylaws and if there are members with voting rights, the board may not adopt, amend, or repeal a bylaw fixing a quorum for meetings of members, prescribing procedures for removing directors or filling vacancies in the board, or fixing the number of directors or their classifications, qualifications, or terms of office, but may adopt or amend a bylaw to increase the number of directors. A bylaw amendment to increase or decrease the vote required for a member action must be approved by the members.

3. Unless the articles or bylaws provide otherwise, at least fifty members with voting rights or ten percent of the members with voting rights, whichever is less, may propose a resolution for action by the members to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board.
 - a. The resolution must contain the provisions proposed for adoption, amendment, or repeal.
 - b. The limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in section 10-33-15, for amendment of the articles, except that board approval is not required.
 - c. The articles or bylaws may impose different or additional requirements for the members to adopt, amend, or repeal the bylaws.

10-33-27. Board.

1. The business and affairs of a corporation must be managed by or under the direction of a board.
 - a. All directors are entitled to vote and have equal rights and preferences except as otherwise provided in the articles or bylaws.
 - b. The members of the first board may be named in the articles, designated or appointed pursuant to the articles, or elected by the incorporators under section 10-33-25.
2. No more than forty-nine percent of the individuals serving on the board of any corporation may be financially interested individuals.
3. For the purposes of this section "financially interested individuals" means:
 - a. Individuals who have received or are entitled to receive compensation, directly or indirectly, from the corporation for services rendered to it within the previous twelve months, whether as full-time or part-time employees, independent contractors, consultants, or otherwise, excluding any reasonable payments made to directors for serving as directors;
 - b. Any parent, child, child of a spouse, brother, or sister, of that individual; or
 - c. The spouse of any individual described in subdivision a or b.
4. Failure to comply with the provisions of this section does not affect the validity or enforceability of any transaction entered into by the corporation.

10-33-28. Number. The board must consist of three or more directors, with the number specified in or fixed in accordance with the articles or bylaws. However, if the corporation has either one or two members with voting rights, the number of directors may be less than three but not less than the number of members with

voting rights. The number of directors may be increased or, subject to sections 10-33-36 and 10-33-37, decreased at any time by amendment to or in the manner provided in the articles or bylaws.

10-33-29. Qualifications - Election. Directors must be individuals. The method of election and any additional qualifications for directors may be imposed by or in the manner provided in the articles or bylaws.

10-33-30. Terms.

1. With respect to length of terms:

- a. Directors are elected or appointed and hold office for fixed terms provided for in the articles or bylaws. A fixed term of a director, other than an ex officio director, may not exceed ten years. If the articles or bylaws do not provide for a fixed term, the term is one year. An ex officio director serves as long as the director holds the office or position designated in the articles or bylaws.
- b. Unless the articles or bylaws provide otherwise, a director holds office until expiration of the term for which the director was elected or appointed and until a successor is elected and qualified, or until the earlier death, resignation, removal, or disqualification of the director.
- c. A decrease in the number of directors or term of office does not shorten an incumbent director's term.
- d. Except as provided in the articles or bylaws, the term of a director filling a vacancy expires at the end of the unexpired term that the director is filling.

2. The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of office of the groups need not be uniform.

10-33-31. Acts not void or voidable. The expiration of a director's term with or without the election of a qualified successor does not make prior or subsequent acts of the officers or the board void or voidable.

10-33-32. Compensation. Subject to any limitations in the articles or bylaws, the board may fix the compensation of directors.

10-33-33. Classification of directors.

1. Except as provided in subsection 2, directors may be divided into classes.
2. Directors of a corporation described in subsection 1 of section 10-33-122 may not vote by class except when the articles or bylaws provide that only one class of directors may vote on a particular matter.

10-33-34. Cumulative voting for directors. Unless the articles provide otherwise or except as provided in section 1 of article XII of the Constitution of North Dakota, there is no cumulative voting.

10-33-35. Resignation.

1. A director may resign at any time by giving written notice to the corporation. The resignation is effective without acceptance when the notice is given to the corporation, unless a later effective time is specified in the notice.
2. If a resignation is made effective at a later date, the board may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

10-33-36. Nonjudicial removal of directors.

1. This section applies unless a different method of removal is provided for in the articles or bylaws.
2. With respect to an elected director:
 - a. If there is a member with voting rights:
 - (1) A director may be removed by the board at any time, with or without cause, if:
 - (a) The director was named by the board to fill a vacancy;
 - (b) The members with voting rights have not elected directors in the interval between the time of the appointment to fill the vacancy and the time of the removal; and
 - (c) A majority of the remaining directors present affirmatively vote to remove the director.
 - (2) A director may be removed at any time, with or without cause, by those members eligible to elect the director.
 - b. If there is no member with voting rights, a director may be removed at any time, with or without cause, by those directors eligible to elect the director.
3. With respect to an appointed director:
 - a. Except as otherwise provided in the articles or bylaws, an appointed director may be removed without cause by the person appointing the director.
 - b. The person removing the director shall do so by giving written notice of the removal to the director and either the presiding officer of the board or the corporation's president or secretary.
 - c. A removal is effective when the notice is effective unless the notice states a future effective date.
4. A new director may be elected at a meeting at which a director is removed.

10-33-37. Removal of directors by judicial proceeding.

1. The district court of the county the principal executive office of a corporation is located in may remove any director of the corporation from office in a proceeding commenced either by the corporation, its members holding at least ten percent of the voting power of any class of shares, or the attorney general, if the court finds:
 - a. The director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation;
 - b. That the provisions of subsection 2 of section 10-33-27 have been violated; or
 - c. Final judgment has been entered finding the director violated section 10-33-45.
2. The court that removes a director may bar the director from serving on the board for a period prescribed by the court.
3. If members or the attorney general commence a proceeding under subdivision a of subsection 1, then the corporation must be made a party defendant.
4. If a corporation or its members commence a proceeding under subsection 1, they must give the attorney general written notice of the proceeding.

10-33-38. Vacancies.

1. Unless the articles or bylaws provide otherwise, and except as provided in this section, if a vacancy occurs on the board, including a vacancy resulting from an increase in the number of directors:
 - a. The members with voting rights, if any, may fill the vacancy; or
 - b. The remaining members of the board, though less than a quorum, may fill the vacancy.
2. If a vacant office was held by a director elected by a class, chapter, or other organizational unit or by region or other geographic grouping, only members of the class, chapter, unit, or grouping are entitled to vote to fill the vacancy.
3. If a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.
4. A vacancy that will occur at a specific later date may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

10-33-39. Board meetings.

1. Meetings of the board may be held from time to time as provided in the articles or bylaws at any place within or without the state that the board may select or by any means described in subsection 2. If the articles,

bylaws, or board fails to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles or bylaws provide otherwise.

2. A board meeting may be conducted by:
 - a. A conference among directors using any means of communication through which the directors may simultaneously hear each other during the conference constitutes a board meeting, if the same notice is given of the conference as would be required by subsection 3 for a meeting, and if the number of directors participating in the conference is a quorum. Participation in a meeting by this means is personal presence at the meeting; or
 - b. Any means of communication through which the director, other directors so participating, and all directors physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by this means is personal presence at the meeting.
3. Unless the articles or bylaws provide for a different time period, a director may call a board meeting by giving at least ten days' notice or, in the case of organizational meetings pursuant to subsection 2 of section 10-33-25, at least three days' notice, to all directors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless the articles or bylaws require it.
4. If the date, time, and place of a board meeting have been provided in the articles or bylaws, or announced at a previous meeting of the board, no notice is required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.
5. A director may waive notice of a meeting of the board. A waiver of notice by a director entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing or by attendance. Attendance by a director at a meeting is a waiver of notice of that meeting, except where the director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection.

10-33-40. Absent directors. If the articles or bylaws so provide, a director may give advance written consent or opposition to a proposal to be acted on at a board meeting. If the director is not present at the meeting, consent or opposition to a proposal does not constitute presence for purposes of determining the existence of a quorum, but consent or opposition must be counted as the vote of a director present at the meeting in favor of or against the proposal and must be entered in the minutes or other record of action at the meeting, if the proposal acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the director has consented or objected.

10-33-41. Quorum. A majority, or a larger or smaller proportion or number provided in the articles or bylaws, of the directors currently holding office is a quorum for the transaction of business. In the absence of a quorum, a majority of the directors present may adjourn a meeting from time to time until a quorum is

present. If a quorum is present when a duly called or held meeting is convened, the directors present may continue to transact business until adjournment, even though the withdrawal of a number of directors originally present leaves less than the proportion or number otherwise required for a quorum.

10-33-42. Act of the board. The board shall take action by the affirmative vote of a majority of directors with voting rights present and entitled to vote at a duly held meeting, unless this chapter or the articles or bylaws require the affirmative vote of a larger proportion or number.

10-33-43. Action without meeting.

1. An action required or permitted to be taken at a board meeting may be taken by written action signed by all of the directors. If the articles so provide, any action, other than an action requiring member approval, may be taken by written action signed by the number of directors that would be required to take the same action at a meeting of the board at which all directors were present.
2. The written action is effective when signed by the required number of directors, unless a different effective time is provided in the written action.
3. When written action is permitted to be taken by less than all directors, all directors must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A director who does not sign or consent to the written action has no liability for the action or actions.

10-33-44. Committees.

1. A resolution approved by the affirmative vote of a majority of the board may establish committees having the authority of the board in the management of the business of the corporation to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent directors or other independent persons to consider legal rights or remedies of the corporation and whether those rights or remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the board.
2. Committee members must be individuals. Unless the articles or bylaws provide for a different membership or manner of appointment, a committee must consist of one or more persons, who need not be directors, appointed by the board.
3. Sections 10-33-39 through 10-33-43 apply to committees and members of committees to the same extent as those sections apply to the board and directors.
4. Minutes, if any, of committee meetings must be made available upon request to members of the committee and to any director.
5. The establishment of, delegation of authority to, and action by a committee does not alone constitute compliance by a director with the standard of conduct set forth in section 10-33-45.

6. Committee members are deemed to be directors for purposes of sections 10-33-45, 10-33-46, and 10-33-84.

10-33-45. Standard of conduct for directors.

1. A director shall discharge the duties of the position of director in good faith, in a manner the director reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a director of the corporation.
2. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:
 - a. One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
 - b. Counsel, public accountants, or other persons as to matters that the director reasonably believes are within the person's professional or expert competence; or
 - c. A committee of the board upon which the director does not serve, duly established in accordance with section 10-33-44 as to matters within its designated authority, if the director reasonably believes the committee to merit confidence.
3. Subsection 2 does not apply to a director who has knowledge concerning the matter in question that makes the reliance otherwise permitted by subsection 2 unwarranted.
4. A director who is present at a meeting of the board when an action is approved by the affirmative vote of a majority of the directors present is presumed to have assented to the action approved, unless the director:
 - a. Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting, in which case the director may not be considered to be present at the meeting for any purpose of this chapter;
 - b. Votes against the action at the meeting; or
 - c. Is prohibited from voting on the action:
 - (1) By the articles;
 - (2) By the bylaws;
 - (3) As the result of the decision to approve, ratify, or authorize a transaction pursuant to section 10-33-46; or
 - (4) By a conflict of interest policy adopted by the board.

5. A director, regardless of how identified, is not considered to be a trustee with respect to the corporation or with respect to property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of the property.

10-33-46. Director conflicts of interest.

1. A contract or other transaction between a corporation and its director or a member of the family of its director; a director of a related organization, or a member of the family of a director of a related organization; or an organization in or of which the corporation's director, or a member of the family of its director, is a director, officer, or legal representative or has a material financial interest, is not void or voidable because the director or the other individual or organization are parties or because the director is present at the meeting of the members or the board or a committee at which the contract or transaction is authorized, approved, or ratified, if at least one of the requirements of subsection 2 is satisfied.
2. A contract or transaction described in subsection 1 is not void or voidable if:
 - a. The contract or transaction was, and the person asserting the validity of the contract or transaction has the burden of establishing that the contract or transaction was, fair and reasonable as to the corporation when it was authorized, approved, or ratified;
 - b. The material facts as to the contract or transaction and as to the director's interest are fully disclosed or known to the members and the contract or transaction is approved in good faith by two-thirds of the members entitled to vote, not counting any vote that the interested director might otherwise have, or the unanimous affirmative vote of all members, whether or not entitled to vote;
 - c. The material facts as to the contract or transaction and as to the director's interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board or committee, not counting any vote that the interested director might otherwise have, and not counting the director in determining the presence of a quorum; or
 - d. The contract or transaction is a merger or consolidation described in section 10-33-85.
3. For purposes of this section:
 - a. A director does not have a material financial interest in a resolution fixing the compensation of the director or fixing the compensation of another director as a director, officer, employee, or agent of the corporation, even though the first director is also receiving compensation from the corporation;

- b. A director has a material financial interest in an organization in which the director, or a member of the family of the director, has a material financial interest; and
 - c. A "member of the family" of a director is a spouse, parent, child, child of a spouse, brother, sister, or the spouse of any of them.
 4. The procedures described under subdivisions a, b, and c of subsection 2 are not required if the contract or other transaction is between related organizations.

10-33-47. Immunity of officers, directors, and trustees. Any person who serves as a director, officer, or trustee of a corporation that is, or would qualify as a nonprofit organization that is described in paragraphs 3, 4, 5, 6, 7, 10, and 19 of section 501(c)(3) of the Internal Revenue Code of 1954, as amended [26 U.S.C. 501(c)(3), (4), (5), (6), (7), (10), and (19)], is immune from civil liability for any act or omission resulting in damage or injury if at the time of the act or omission all of the following are met:

1. The officer, director, or trustee was acting in good faith and in the scope of that person's official duties as a director, officer, or trustee.
2. The act or omission did not constitute willful misconduct or gross negligence on the part of the officer, director, or trustee.
3. The officer, director, or trustee did not receive or expect to receive reimbursement for or payment of expenses in excess of two thousand dollars per year for expenses actually incurred as a result of providing services as a director, officer, or trustee, and did not receive or expect to receive compensation or anything in lieu of compensation as payment for services provided as a director, officer, or trustee.

10-33-48. Immunity of volunteers.

1. Any person who, on a volunteer basis, provides services or performs duties on behalf of a corporation is immune from civil liability for any act or omission resulting in damage or injury if at the time of the act or omission all of the following are met:
 - a. The person who caused the damage or injury was acting in good faith and in the scope of that person's duties as a volunteer for the corporation.
 - b. The act or omission did not constitute willful misconduct or gross negligence.
2. This section does not grant immunity to any person causing damage as the result of the negligent operation of a motor vehicle.

10-33-49. Officers. The officers of a corporation must be individuals who are eighteen years of age or more, and must include a president, secretary, and treasurer. The officers of the corporation may also include one or more vice presidents and any other officers or agents as may be prescribed by the bylaws. Each officer must be elected by the board at the time and in the manner as may be provided in the bylaws unless the articles or bylaws provide that the members may elect the officers.

10-33-50. Duties of officers and agents. Unless the articles, bylaws, or a resolution adopted by the board which is not inconsistent with the articles or bylaws, provides otherwise:

1. The president shall:
 - a. Have general active management for the business of the corporation;
 - b. When present, preside at all meetings of the board and of members;
 - c. See that all orders and resolutions of the board are carried into effect;
 - d. Sign and deliver in the name of the corporation, any deeds, mortgages, bonds, contracts, or other instruments pertaining to the business of the corporation, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the articles or bylaws or by the board to some officer or agent of the corporation;
 - e. Maintain records of and, whenever necessary, certify all proceedings of the board and the members; and
 - f. Perform other duties prescribed by the board.
2. The vice president, if any, or, if there is more than one, the vice presidents in the order determined by the board, shall:
 - a. In the absence or disability of the president, perform the duties and exercise the powers of the president; and
 - b. Perform any other duties and shall have such other powers as the board may from time to time prescribe.
3. The treasurer shall:
 - a. Keep accurate financial records for the corporation;
 - b. Deposit all money, drafts, and checks in the name of and to the credit of the corporation in the banks and depositories designated by the board;
 - c. Endorse for deposit all notes, checks, and drafts received by the corporation as ordered by the board, making proper vouchers;
 - d. Disburse corporate funds and issue checks and drafts in the name of the corporation, as ordered by the board;
 - e. Give to the president and the board, whenever requested, an account of all transactions by the treasurer and of the financial condition of the corporation; and
 - f. Perform other duties prescribed by the board or by the president.
4. The secretary shall:

- a. Attend all meetings of the board, all meetings of the members and, when required, all meetings of standing committees;
 - b. Record all proceedings of the meetings;
 - c. Give, or cause to be given, notice of all meetings of the members and meetings of the board; and
 - d. Perform other duties prescribed by the board.
5. All other officers and agents of the corporation, as between themselves and the corporation, have the authority and shall perform the duties in the management of the corporation as may be provided in the articles or bylaws, or as may be determined by resolution of the board not inconsistent with the articles and bylaws.

10-33-51. Multiple offices. Any number of offices or functions of those offices may be held or exercised by the same individual. If a document must be signed by individuals holding different offices or functions and an individual holds or exercises more than one of those offices or functions, that individual may sign the document in more than one capacity, but only if the document indicates each capacity in which the individual signs.

10-33-52. Officers deemed elected. In the absence of an election or appointment of officers by the board, the individual or individuals exercising the functions of the principal officers of the corporation are deemed to have been elected to those offices.

10-33-53. Contract rights. The election or appointment of an individual as an officer or agent does not, of itself, create contract rights. However, a corporation may enter into a contract with an officer or agent. The resignation or removal of an officer or agent is without prejudice to any contractual rights or obligations. The fact that the contract may be for a term that is longer than the terms of the directors who authorized or approved the contract does not make the contract void or voidable.

10-33-54. Resignation - Removal - Vacancies.

1. An officer may resign by giving written notice to the corporation. The resignation is effective without acceptance when the notice is given to the corporation, unless a later effective date is specified in the notice.
2. Except as otherwise provided in the articles or bylaws, an officer may be removed at any time, with or without cause, by a resolution adopted by the board or by the members, whichever elected or appointed the officer. The removal is without prejudice to any contractual rights of the officer.
3. A vacancy in an office because of death, resignation, removal, disqualification, or other cause may, or in the case of a vacancy in the office of president or treasurer must, be filled for the unexpired part of the term in the manner provided in the articles or bylaws, or as determined by the board or under section 10-33-52.

10-33-55. Delegation. Unless prohibited by the articles or bylaws or by a resolution adopted by the board, an officer elected or appointed by the board, without the approval of the board, may delegate some or all of the duties and

powers of an office to other individuals. An officer who delegates the duties or powers of an office remains subject to the standard of conduct for an officer with respect to the discharge of all duties and powers so delegated.

10-33-56. Standard of conduct for officers.

1. An officer shall discharge the duties of an office in good faith, in a manner the officer reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. An individual exercising the principal functions of an office or to whom some or all of the duties and powers of an office are delegated pursuant to section 10-33-55 is deemed an officer for purposes of this section and sections 10-33-81 and 10-33-84.
2. An officer is not considered to be a trustee with respect to the corporation or with respect to property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of the property.

10-33-57. Members.

1. A corporation may have one or more classes of members or may have no members. In the absence of a provision in its articles or bylaws providing for members, a corporation has no members.
 - a. If a corporation has no members, an action for which there is no specific provision of this chapter applicable to a corporation without members and that would otherwise require approval of the members requires only the approval of the board.
 - b. A reference in this chapter to a corporation that has no members includes a corporation in which the directors are the only members.
2. A corporation may admit any person as a member.
 - a. The articles or bylaws may establish criteria or procedures for admission.
 - b. A person may not be admitted as a member without the person's express or implied consent.
 - (1) For purposes of this subdivision, consent includes acceptance of membership benefits knowing that the benefits are available only to members, or taking some other affirmative action that confers membership benefits.
 - (2) If the articles or bylaws provide that a person who contributes to the corporation is a member, a contribution is consent.
3. Except as provided in its articles or bylaws, a corporation may admit members for no consideration or for consideration as is determined by the board.
4. Members are of one class unless the articles establish, or authorize the bylaws to establish, more than one class. Members are entitled to vote

and have equal rights and preferences except to the extent that the articles or bylaws have fixed or limited the rights and preferences of members or different classes of members or provide for nonvoting members. The articles or bylaws may fix the term of membership.

10-33-58. Membership certificates. A corporation may issue certificates showing membership in the corporation. In lieu of a membership certificate, a corporation may issue preferred or common shares. Shares may be issued upon the terms and conditions that the board considers appropriate.

10-33-59. Transfer of membership.

1. Except as provided in the articles or bylaws, a member of a corporation may not transfer a membership or a right arising from it.
2. Where transfer rights have been provided, a restriction on them is not binding with respect to a member holding a membership issued before the adoption of the restriction unless the restriction is approved by the members and the affected member.

10-33-60. Liability of members - Third parties - Dues, assessments, or fees.

1. A member of a corporation is not, as such, personally liable for the acts, debts, liabilities, or obligations of the corporation.
2. When authority to do so is conferred by the articles or bylaws and subject to any limitations, a corporation may levy dues, assessments, or fees upon its members.
 - a. The dues, assessments, or fees may be imposed upon all classes of members alike or differently upon different classes of members.
 - b. Members of one or more classes may be exempted.
3. Articles or bylaws may:
 - a. Fix the amount of the levy and the method of collection of dues, assessments, or fees;
 - b. Authorize the directors to fix the amount from time to time and determine the methods of collection;
 - c. Provide for enforcement or collection of dues, assessments, or fees;
 - d. Provide for cancellation of membership, on reasonable notice, for nonpayment of dues, assessments, or fees; or
 - e. Provide for reinstatement of membership.

10-33-61. Resignation. A member may resign at any time. The resignation of a member does not relieve the member from any obligations the member may have to the corporation for dues, assessments, or fees or charges for goods or services.

10-33-62. Termination.

1. A member may not be expelled or suspended, and a membership may not be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith. This section does not apply to the termination of a membership at the end of a fixed term.
2. A procedure is fair and reasonable when it is fair and reasonable taking into consideration all of the relevant facts and circumstances. In addition, a procedure is fair and reasonable if it provides:
 - a. Not less than fifteen days' prior written notice of the expulsion, suspension, or termination, and the reasons for it; and
 - b. An opportunity for the member to be heard, orally or in writing, not less than five days before the effective date of the expulsion, suspension, or termination by a person authorized to decide that the proposed expulsion, termination, or suspension not take place.
3. A proceeding challenging an expulsion, suspension, or termination, including a proceeding in which defective notice is alleged, must be commenced within one year after the effective date of the expulsion, suspension, or termination.
4. The expulsion, suspension, or termination of a member does not relieve the member from obligations the member may have to the corporation for dues, assessments, or fees or charges for goods or services.

10-33-63. Purchase of memberships. If authorized in its articles or bylaws, a corporation may buy the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions in the articles or bylaws.

10-33-64. Delegates. A corporation may provide in its articles or bylaws for delegates having some or all the authority of members. The articles or bylaws may set forth provisions relating to:

1. The characteristics, qualifications, rights, limitations, and obligations of the delegates, including their selection and removal;
2. Calling, noticing, holding, and conducting meetings of delegates; and
3. Carrying on corporate activities during and between meetings of delegates.

10-33-65. Annual meetings of voting members.

1. Unless the articles or bylaws provide otherwise, a corporation with voting members shall hold at least an annual meeting of voting members.
2. If an annual meeting of voting members has not been held during the preceding fifteen months, at least fifty members with voting rights or ten percent of the members with voting rights, whichever is less, may demand an annual meeting of members by written notice of demand given to the president or the secretary of the corporation. Within thirty days after receipt of the demand, the board shall cause a meeting of members to be called and held at the expense of the corporation on

notice no later than ninety days after receipt of the demand. If the board fails to cause a meeting to be called and held as required by this subsection, the members with voting rights making the demand may call the meeting at the expense of the corporation by giving notice as required by section 10-33-68.

3. An annual meeting of members must be held at the time and place stated in or fixed in accordance with the articles or bylaws. If a place is not stated or if a demand for a meeting is made under subsection 2, the meeting must be held in the county where the principal executive office of the corporation is located.
4. At an annual meeting of members:
 - a. There must be an election of successors for directors elected by members and whose terms have expired or whose terms expire at an annual meeting;
 - b. There must be a report on the activities and financial condition of the corporation; and
 - c. The members shall consider and act upon other matters as may be raised consistent with the notice of meeting requirements.
5. The failure to hold a meeting in accordance with the articles or bylaws does not affect the validity of a corporate action.

10-33-66. Special meetings of voting members.

1. A corporation with voting members shall hold a special meeting of members:
 - a. On call of its board or persons authorized to do so by the articles or bylaws; or
 - b. If at least fifty members with voting rights or ten percent of the members with voting rights, whichever is less, sign, date, and deliver to the president or the secretary one or more written demands for the meeting describing the purpose for which it is to be held.
2. Within thirty days after receipt of a demand for a special meeting from voting members, the board shall cause a special meeting to be called and held on notice no later than ninety days after receipt of the demand. If the board fails to cause a special meeting to be called and held as required by this subsection, a voting member making the demand may call the meeting by giving notice pursuant to section 10-33-68. All necessary expenses of the notice and meeting shall be paid by the corporation.
3. Special meetings of members may be held in or out of this state at the place stated in or fixed in accordance with the articles, bylaws, or by the president or the board. If a special meeting is demanded by the members, the meeting must be held in the county where the principal executive office of the corporation is located.

4. The notice of a special meeting must contain a statement of the purposes of the meeting and may contain other information required by the articles or bylaws or considered necessary or desirable by the board or by another person calling the meeting.
 - a. The business transacted at a special meeting is limited to the purposes stated within the notice of the meeting.
 - b. Business transacted at a special meeting that is not included in those stated purposes is voidable by or on behalf of the corporation, unless all of the members with voting rights have waived notice of the meeting pursuant to section 10-33-68.

10-33-67. Court-ordered meeting of voting members.

1. The district court of the county where the principal executive office of a corporation is located may order a meeting to be held:
 - a. If a meeting was not held within the earlier of six months after the fiscal yearend of the corporation or fifteen months after its last meeting:
 - (1) On application of at least fifty members with voting rights or ten percent of the members with voting rights, whichever is less; or
 - (2) On application of another person entitled to participate in the annual meeting; or
 - b. On application of a voting member who signed a demand for a special meeting valid under section 10-33-66 or a person entitled to call a special meeting if:
 - (1) Notice of the special meeting was not given within thirty days after the date the demand was delivered to a corporate officer; or
 - (2) The special meeting was not held in accordance with the notice.
2. The court may:
 - a. Fix the time and place of the meeting;
 - b. Specify a record date for determining members entitled to notice of and to vote at the meeting;
 - c. Prescribe the form and content of the meeting notice;
 - d. Fix the quorum required for specific matters to be considered at the meeting, or direct that the votes represented at the meeting constitute a quorum for action on those matters; and
 - e. Enter other orders necessary to accomplish the purposes of the meeting.

3. If the court orders a meeting, it may also order the corporation to pay the costs of the member, including reasonable attorneys' fees incurred to obtain the order.

10-33-68. Notice.

1. Except as otherwise provided in this chapter, notice of meetings of members must be given to every voting member as of the record date determined under section 10-33-69 unless:
 - a. The meeting is an adjourned meeting and the date, time, and place of the meeting were announced at the time of adjournment, notice is not required unless a new record date for the adjourned meeting is or must be fixed under section 10-33-69; or
 - b. Two consecutive annual meeting notices and notices of any special meetings held during the period between the two annual meetings have been mailed to the member by first-class mail and returned undeliverable.
2. An action or meeting that is taken or held without notice under subdivision b of subsection 1 has the same force and effect as if notice was given. If the member delivers a written notice of the member's current address to the corporation, the notice requirement is reinstated.
3. If notice of an adjourned meeting is required under subdivision a of subsection 1, the date for determination of members entitled to notice and entitled to vote at the adjourned meeting must comply with subsection 1 of section 10-33-69, except that if the date of the meeting is set by court order, the court may provide the original date of determination will continue in effect or fix a new date.
4. The notice:
 - a. In all cases where a specific minimum notice period has not been fixed by law, must be given at least five days before the date of the meeting, or a shorter time provided in the articles or bylaws, and not more than fifty days before the date of the meeting;
 - b. Must contain the date, time, and place of the meeting;
 - c. Must inform members if proxies are permitted at the meeting and, if so, state the procedure for appointing proxies;
 - d. Must contain a statement of the purpose of the meeting, in the case of a special meeting;
 - e. Must contain any other information required by the articles or bylaws, this chapter, or considered necessary or desirable by the board; and
 - f. May contain any other information considered necessary or desirable by the person calling the meeting.
5. A member may waive notice of a meeting of members.

- a. A waiver of notice by a member entitled to notice is effective:
 - (1) Whether given before, at, or after the meeting; and
 - (2) Whether given in writing, orally, or by attendance.
- b. Attendance by a member at a meeting is a waiver of notice of that meeting, unless the member:
 - (1) Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened; or
 - (2) Objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

10-33-69. Record date - Determining members entitled to notice and vote.

1. The board may fix a date not more than fifty days, or a shorter time period provided in the articles or bylaws, before the date of a meeting of members as the date for the determination of the members entitled to notice of and entitled to vote at the meeting. When a date is fixed, only members with voting rights on that date are entitled to notice of and permitted to vote at that meeting of members.
2. A determination of members entitled to notice and to vote at a membership meeting is effective for an adjournment of the meeting unless the board fixes a new date for determining the right to notice and to vote, which it must do if the meeting is adjourned to a date more than fifty days after the record date for determining members entitled to notice of the original meeting.
3. If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, the court may provide that the original record date for notice and voting continues in effect or the court may fix a new record date for notice and voting.

10-33-70. Members' list for meeting.

1. After fixing a record date for notice of and voting at a meeting, a corporation shall prepare an alphabetical list of the names of its members who are entitled to notice and to vote. The list must show the address and number of votes each member is entitled to vote at the meeting.
2. The list of members must be available for inspection by a member with voting rights for the purpose of communication with other members concerning the meeting, beginning two business days after the meeting notice is given and continuing through the meeting, at the principal executive office of the corporation or at a reasonable place identified in the meeting notice in the city where the meeting will be held.
 - a. The list also must be available at the meeting.

- b. A member, a member's agent, or attorney is entitled on written demand to inspect and to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection and at any time during the meeting or an adjournment.
3. If the corporation refuses to allow a member with voting rights, the member's agent, or attorney to inspect the list of members before or at the meeting, the district court of the county where the principal executive office of the corporation is located, on application of the member, may:
 - a. Order the inspection or copying at the corporation's expense;
 - b. Postpone the meeting until the inspection or copying is complete; or
 - c. Order the corporation to pay the member's costs, including reasonable attorneys' fees, incurred to obtain the order.
4. Unless a written demand to inspect and copy a membership list has been made under subsection 2 before the membership meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.
5. A member, agent, or attorney who gains access to a membership list under this section may not use or give to another for use the membership list for any purpose other than a proper purpose. Upon application of the corporation, the district court may issue a protective order or order other relief necessary to enforce this subsection.

10-33-71. Right to vote. Unless the articles or bylaws provide otherwise, each member with voting rights is entitled to one vote on each matter voted on by the members. If a membership stands of record in the names of two or more persons, their acts with respect to voting have the following effect:

1. If only one votes, the act binds all.
2. If more than one votes, the vote must be divided on a pro rata basis.

10-33-72. Act of the members.

1. Unless this chapter or the articles or bylaws require a greater vote or voting by class, the members shall take action by the affirmative vote of the greater of:
 - a. A majority of the members with voting rights present and entitled to vote on that item of business; or
 - b. A majority of the voting power of the minimum number of members with voting rights that would constitute a quorum for the transaction of business at the meeting.

If the articles or bylaws require a larger proportion or number than is required by this chapter for a particular action, the articles or bylaws control.

2. Unless otherwise provided in the articles or bylaws, members may take action at a meeting:
 - a. By voice or ballot.
 - b. By action without a meeting pursuant to section 10-33-73.
 - c. By written ballot pursuant to section 10-33-74.
 - d. By electronic communication pursuant to section 10-33-75.

10-33-73. Action without a meeting. An action required or permitted to be taken at a meeting of the members may be taken without a meeting by written action signed by all of the members entitled to vote on that action.

1. If the articles so provide, any action may be taken by written action signed by the members who hold voting power equal to the voting power that would be required to take the same action at a meeting of the members at which all members were present.
2. The written action is effective when signed by the required members, unless a different effective time is provided in the written action.
3. When written action is permitted to be taken by less than all members, all members must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A member who does not sign or consent to the written action has no liability for the action or actions taken by the written action.
4. When this chapter requires or permits a certificate concerning an action to be filed with the secretary of state, the certificate must indicate that the action was taken under this section.

10-33-74. Action by written ballot.

1. Except as provided in subsection 5 and unless prohibited or limited by the articles or bylaws, an action that may be taken at a regular or special meeting of members may be taken without a meeting if the corporation mails or delivers a written ballot to every member entitled to vote on the matter.
2. A written ballot must set forth each proposed action and provide an opportunity to vote for or against each proposed action.
3. Approval by written ballot under this section is valid only if:
 - a. The number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action; and
 - b. The number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.
4. Solicitations for votes by written ballot must:

- a. Indicate the number of responses needed to meet the quorum requirements;
 - b. State the percentage of approvals necessary to approve each matter other than election of directors; and
 - c. Specify the time by which a ballot must be received by the corporation in order to be counted.
5. Except as otherwise provided in the articles or bylaws, a written ballot may not be revoked.

10-33-75. Electronic communications.

1. A conference among the members by any means of communication through which the participants may simultaneously hear each other during the conference constitutes a regular or special meeting of the members:
 - a. If the same notice is given of the conference as would be required for a meeting; and
 - b. If the number of members participating in the conference would be sufficient to constitute a quorum at a meeting.

Participation in a conference by this means constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-33-77 are met.

2. A member may participate in a regular or special meeting of members not described in subsection 1 by any means of communication through which the member, other participants, and all persons physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-33-77 are met.
3. Waiver of notice of a meeting by means of communication described in subsections 1 and 2 may be given in the manner provided in subsection 5 of section 10-33-68. Participation in a meeting by means of communications described in subsections 1 and 2 is a waiver of notice of that meeting, except where the member:
 - a. Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened; or
 - b. Objects before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

10-33-76. Quorum.

1. Unless otherwise provided by the articles or bylaws, a quorum for a meeting of members is ten percent of the members entitled to vote at the meeting.

2. Except as provided in subdivision b, a quorum is necessary for the transaction of business at a meeting of members.
 - a. If a quorum is not present, a meeting may be adjourned from time to time for that reason.
 - b. If a quorum has been present at a meeting and members have withdrawn from the meeting so that less than a quorum remains, the members still present may continue to transact business until adjournment.

10-33-77. Proxies.

1. If the articles or bylaws permit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form either personally or by an attorney-in-fact.
2. An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven months unless a different period is expressly provided in the appointment. However, a proxy is not valid for more than three years from its date of execution.
3. An appointment of a proxy is revocable by the member. Appointment of a proxy is revoked by the person appointing the proxy by attending a meeting and voting in person, or signing and delivering to the officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked, or a later appointment. Revocation in either manner revokes all prior proxy appointments and is effective when filed with an officer of the corporation.
4. The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the authority of the proxy unless notice of the death or incapacity is received by an officer authorized to tabulate votes before the proxy exercises authority under the appointment.
5. Subject to section 10-33-78 and an express limitation on the authority of the proxy appearing on the face of the appointment form, a corporation is entitled to accept the vote or other action of the proxy as that of the member making the appointment.
6. The vote of a proxy is final, binding, and not subject to challenge, but the proxy is liable to the member for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment.
7. Unless the appointment specifically provides otherwise, if two or more persons are appointed as proxies for a member, any one of them may vote on each item of business in accordance with specific instructions contained in the appointment, but if no specific instructions are contained in the appointment with respect to voting on a particular item of business, a majority of the proxies have the authority conferred by the instrument. If the proxies are equally divided, they share the vote equally.

10-33-78. Corporation's acceptance of member's act.

1. If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the record name of a member, the corporation if acting in good faith may accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member.
2. Unless the articles or bylaws provide otherwise, if the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name of a member, the corporation if acting in good faith may accept the vote, consent waiver, or proxy appointment and give it effect as the act of the member if:
 - a. The member is an organization and the name signed purports to be that of an officer, manager, or agent of the organization;
 - b. The name signed purports to be that of an administrator, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;
 - c. The name signed purports to be that of a receiver or trustee in bankruptcy of the member, and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;
 - d. The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the member and if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment; or
 - e. Two or more persons hold the membership as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coholders and the person signing appears to be acting on behalf of all the coholders.
3. The corporation may reject a vote, consent, waiver, or proxy appointment if the officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.
4. The corporation or its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section is not liable in damages to the member for the consequences of the acceptance or rejection.
5. Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

10-33-79. Voting agreements.

1. To the extent permitted in the articles or bylaws, two or more members may provide for how they will vote by signing an agreement for that purpose. An agreement may be valid for a period of up to ten years. The agreement must have a reasonable purpose consistent with the purposes of the corporation.
2. A voting agreement created under this section is specifically enforceable.
3. A voting agreement is not effective until it is filed with the corporation.

10-33-80. Books and records - Financial statement.

1. A corporation shall keep at its principal executive office correct and complete copies of its articles and bylaws, accounting records, voting agreements, and minutes of meetings of members, board of directors, and committees having any of the authority of the board of directors for the last six years.
2. A member or a director, or the agent or attorney of a member or a director, may inspect all documents referred to in subsection 1 or 3 for any proper purpose at any reasonable time. A proper purpose is one reasonably related to the interest of the person as a member or director of the corporation.
3. Upon request, a corporation shall give the member or the director a statement showing the financial result of all operations and transactions affecting income and surplus during its last annual accounting period and a balance sheet containing a summary of its assets and liabilities as of the closing date of the accounting period.
4. A member or director who has gained access under this section to any corporate record may not use or furnish to another for use the corporate record or a portion of the contents for any purpose other than a proper purpose. Upon application of the corporation, a court may issue a protective order or order other relief as may be necessary to enforce the provisions of this subdivision.
5. The corporation may charge the requesting party a reasonable fee to cover the expenses of providing copies of documents under this section.
6. The records maintained by a corporation may use any information storage technique, even though the technique makes them illegible visually, if the records can be converted accurately and within a reasonable time into a form that is legible visually and whose contents are assembled by related subject matter to permit convenient use by people in the normal course of business. A corporation shall convert any of the records referred to in subsection 1 or 3 upon the request of a person entitled to inspect them with the expense of the conversion being borne by the person who bears the expense of copying under subsection 5. A copy of the conversion is admissible in evidence, and must be accepted for all other purposes, to the same extent as the existing or original records would be if they were legible visually.
7. A member or a director who is wrongfully denied access to or copies of documents under this section may bring an action for injunctive relief, damages, and costs and reasonable attorneys' fees.

10-33-81. Equitable remedies. If a corporation or an officer or director of the corporation violates this chapter, a court in this state, in an action brought by at least fifty members with voting rights or ten percent of the members with voting rights, whichever is less, or by the attorney general, may grant equitable relief it considers just and reasonable in the circumstances and award expenses, including attorneys' fees and disbursements, to the members.

10-33-82. Loans - Guarantees - Suretyship.

1. Except as provided in subsection 2, a corporation may lend money to, guarantee or pledge its assets as security for an obligation of, become a surety for, or otherwise financially assist a person, if the transaction, or a class of transactions to which the transaction belongs, is approved by the board and:
 - a. Is in the usual and regular course of activities of the corporation;
 - b. Is with, or for the benefit of:
 - (1) A related organization;
 - (2) An organization in which the corporation has a financial interest;
 - (3) A person or organization with whom the corporation has a relationship in the usual and regular course of its activities; or
 - (4) An organization to which the corporation has the power to make donations; or
 - c. Has been approved by:
 - (1) Two-thirds of the members with voting rights; or
 - (2) If there is no member with voting rights, by two-thirds of the board.
2. A corporation may not lend money to or guarantee the obligation of a director or officer of the corporation or a related organization, or of the spouse, parents, children and spouses of children, brothers and sisters or spouses of brothers and sisters of the director or officer.
 - a. If a loan or guarantee is made in violation of this section, the borrower's liability on the loan is not affected.
 - b. The directors of a corporation who vote for or assent to the making of a loan to a director or officer of the corporation, or who vote for or assent to the guarantee of the obligation of a director or officer of the corporation, and any officer participating in the making of such loan or guarantee shall be jointly and severally liable to the corporation for the amount of the loan until its repayment.
 - c. This subsection does not prohibit an advance of money for expenses authorized by section 10-33-83.

3. A loan, guaranty, surety contract, or other financial assistance under subsection 1 or 2 may be with or without interest and may be unsecured or secured.
4. This section does not grant authority to act as a bank or to carry on the business of banking.

10-33-83. Advances. A corporation, without a vote of the directors or its members, may advance money to its directors, officers, employees, or agents to cover expenses that can reasonably be anticipated to be incurred by them in the performance of their duties and for which they would be entitled to reimbursement in the absence of an advance.

10-33-84. Indemnification.

1. For purposes of this section:
 - a. "Corporation" includes a domestic or foreign corporation that was the predecessor of the corporation referred to in this section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.
 - b. "Official capacity" means:
 - (1) With respect to a director, the position of director in a corporation;
 - (2) With respect to a person other than a director, the elective or appointive office or position held by an officer, member of a committee of the board, or the employment relationship undertaken by an employee of the corporation; and
 - (3) With respect to a director, officer, or employee of the corporation who, while a director, officer, or employee of the corporation, is or was serving at the request of the corporation or whose duties in that position involve or involved service as a director, governor, officer, manager, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a director, governor, officer, manager, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.
 - c. "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the corporation.
 - d. "Special legal counsel" means counsel who has not represented the corporation or a related organization, or a director, officer, member of a committee of the board, or employee whose indemnification is in issue.
2. Subject to subsection 5, a corporation shall indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines including excise taxes assessed against the person with respect to an

employee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the person:

- a. Has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines including excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by the person in connection with the proceeding with respect to the same acts or omissions;
 - b. Acted in good faith;
 - c. Received no improper personal benefit and section 10-33-45, if applicable, has been satisfied;
 - d. In the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and
 - e. In the case of acts or omissions occurring in the official capacity described in paragraph 1 or 2 of subdivision b of subsection 1, reasonably believed that the conduct was in the best interests of the corporation, or in the case of acts or omissions occurring in the official capacity described in paragraph 3 of subdivision b of subsection 1, reasonably believed that the conduct was not opposed to the best interests of the corporation. If the person's acts or omissions complained of in the proceeding relate to conduct as a director, governor, officer, manager, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the corporation if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.
3. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent does not, of itself, establish that the person did not meet the criteria set forth in subsection 2.
 4. Subject to subsection 5, if a person is made or threatened to be made a party to a proceeding, the person is entitled, upon written request to the corporation, to payment or reimbursement by the corporation of reasonable expenses, including attorneys' fees and disbursements, incurred by the person in advance of the final disposition of the proceeding:
 - a. Upon receipt by the corporation of a written affirmation by the person of a good faith belief that the criteria for indemnification set forth in subsection 2 have been satisfied and a written undertaking by the person to repay all amounts so paid or reimbursed by the corporation, if it is ultimately determined that the criteria for indemnification have not been satisfied; and

- b. After a determination that the facts then known to those making the determination would not preclude indemnification under this section.

The written undertaking required by subdivision a is an unlimited general obligation of the person making it, but need not be secured and shall be accepted without reference to financial ability to make the repayment.

5. The articles or bylaws either may prohibit indemnification or advances of expenses otherwise required by this section or may impose conditions on indemnification or advances of expenses in addition to the conditions contained in subsections 2, 3, and 4 including monetary limits on indemnification or advances for expenses, if the conditions apply equally to all persons or to all persons within a given class. A prohibition or limit on indemnification or advances may not apply to or affect the right of a person to indemnification or advances of expenses with respect to any acts or omissions of the person occurring prior to the effective date of a provision in the articles or the date of adoption of a provision in the bylaws establishing the prohibition or limit on indemnification or advances.
6. This section does not require, or limit the ability of, a corporation to reimburse expenses, including attorneys' fees and disbursements, incurred by a person in connection with an appearance as a witness in a proceeding at a time when the person has not been made or threatened to be made a party to a proceeding.
7. All determinations whether indemnification of a person is required because the criteria provided in subsection 2 have been satisfied and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 4 must be made:
 - a. By the board by a majority of a quorum, if the directors who are at the time parties to the proceeding are not counted for determining either a majority or the presence of a quorum;
 - b. If a quorum under subdivision a cannot be obtained by a majority of a committee of the board, consisting solely of two or more directors not at the time parties to the proceeding, duly designated to act in the matter by a majority of the full board including directors who are parties;
 - c. If a determination is not made under subdivision a or b, by special legal counsel, selected either by a majority of the board or a committee by vote pursuant to subdivision a or b or, if the requisite quorum of the full board cannot be obtained and the committee cannot be established, by a majority of the full board including directors who are parties;
 - d. If a determination is not made under subdivisions a, b, and c, by the members with voting rights, other than members who are a party to the proceeding; or

e. If an adverse determination is made under subdivisions a through d, or under subsection 8, or if no determination is made under subdivisions a through d, or under subsection 8, within sixty days after:

- (1) The later to occur of the termination of a proceeding or a written request for indemnification to the corporation; or
- (2) A request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place, upon application of the person and any notice the court requires.

The person seeking indemnification or payment or reimbursement of expenses pursuant to this subdivision has the burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.

8. With respect to a person who is not, and who was not at the time of the acts or omissions complained of in the proceedings, a director, officer, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the corporation, the determination whether indemnification of this person is required because the criteria set forth in subsection 2 have been satisfied and whether this person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 4 may be made by an annually appointed committee of the board, having at least one member who is a director. The committee shall report at least annually to the board concerning its actions.
9. A corporation may purchase and maintain insurance on behalf of a person in that person's official capacity against any liability asserted against and incurred by the person in or arising from that capacity, whether or not the corporation would have been required to indemnify the person against the liability under this section.
10. A corporation with members with voting rights that indemnifies or advances expenses to a person in accordance with this section in connection with a proceeding by or on behalf of the corporation shall report to the members in writing the amount of the indemnification or advance and to whom and on whose behalf it was paid not later than the next meeting of members.
11. Nothing in this section may be construed to limit the power of the corporation to indemnify other persons by contract or otherwise.

10-33-85. Merger, consolidation, or transfer.

1. Two or more corporations may merge or consolidate, resulting in a single corporation subject to this chapter. A merger or consolidation must be made as provided in sections 10-33-86 through 10-33-92.
2. A corporation may sell, lease, transfer, or dispose of all or substantially all of its property and assets under section 10-33-94.

3. If applicable, a corporation shall comply with section 10-33-122 before it may merge or consolidate or transfer all or substantially all of its assets.

10-33-86. Plan of merger or consolidation. A plan of merger or consolidation must contain:

1. The names of the corporations proposing to merge or consolidate;
2. The name of the surviving or new corporation;
3. The terms and conditions of the proposed merger or consolidation;
4. In the case of a merger, the manner and basis of converting the memberships of the constituent corporations into memberships of the surviving corporation or of any other corporation;
5. In the case of a merger, a statement of amendments to the articles of the surviving corporation proposed as part of the merger;
6. In the case of a consolidation, the provisions required by section 10-33-06 to be set out in the articles of the new corporation; and
7. Other provisions with respect to the proposed merger or consolidation which are considered necessary or desirable.

10-33-87. Plan approval.

1. A plan of merger or consolidation must be approved and adopted by each constituent corporation as provided in this section.
2. When a constituent corporation has members with voting rights with respect to mergers and consolidations, the board of directors of the corporation shall adopt a resolution by a majority vote of all directors approving a proposed plan of merger or consolidation and directing that the plan be submitted to a vote at a meeting of the members with voting rights. Notice of the meeting must be given to the members, accompanied by a copy or summary of the proposed plan. Unless the articles or bylaws require a greater vote, the plan of merger or consolidation is adopted upon receiving the affirmative vote of a majority of the members who vote upon the proposed plan.
3. When a constituent corporation does not have a member with voting rights and unless the articles or bylaws require a greater vote, a plan of merger or consolidation is adopted at a meeting of the board of directors of the corporation upon receiving the affirmative votes of a majority of all directors. Notice of the meeting must be given to all directors accompanied by a copy of the proposed plan of merger or consolidation.

10-33-88. Articles of merger or consolidation - Certificate.

1. Upon receiving the approval required by section 10-33-87 and after compliance with section 10-33-122, if applicable, articles of merger or consolidation must be prepared that contain:
 - a. The plan of merger or consolidation;

- b. A statement that the plan has been approved by each corporation under this chapter; and
 - c. A statement that the notice of the attorney general required by section 10-33-122 has been given and the waiting period has expired or has been waived by the attorney general or a statement that section 10-33-122 is not applicable.
2. The articles of merger or consolidation must be signed on behalf of each constituent corporation and filed with the secretary of state.
3. The secretary of state shall issue a certificate of merger to the surviving corporation or its legal representative or a certificate of consolidation and incorporation to the new corporation. The certificate must contain the effective date of merger or consolidation.

10-33-89. Abandonment.

1. After a plan of merger or consolidation has been approved by each constituent corporation under section 10-33-87 and before the effective date of the plan, it may be abandoned:
 - a. If each constituent corporation has approved the abandonment at a meeting:
 - (1) By a majority of the members with voting rights voting on the issue; or
 - (2) If the corporation does not have voting members, by a majority of all directors; or
 - b. If the plan itself provides for abandonment and the conditions for abandonment in the plan are met.
2. A plan of merger or consolidation may be abandoned after it has been approved by each constituent corporation and before the effective date of the plan, by a resolution approved by a majority of all directors of the constituent corporation abandoning the plan of merger or consolidation, subject to the contract rights of any other person under the plan.
3. If articles of merger or consolidation have been filed with the secretary of state, but have not yet become effective, articles of abandonment that comply with subsection 4 must be filed with the secretary of state by:
 - a. The constituent corporations, in the case of abandonment under subdivision a of subsection 1;
 - b. The constituent corporations or any one of them, in the case of abandonment under subdivision b of subsection 1; or
 - c. The abandoning corporation in the case of abandonment under subsection 2.
4. The articles of abandonment must contain:
 - a. The names of the constituent corporations;

- b. The provision of this section under which the plan is abandoned; and
- c. If the plan is abandoned under subsection 2, the text of the resolution approved by the directors abandoning the plan.

10-33-90. Effective date of merger or consolidation - Effect.

- 1. A merger or consolidation is effective when the articles of merger or consolidation are filed with the secretary of state or on a later date named in the articles.
- 2. When a merger or consolidation becomes effective:
 - a. The constituent corporations become a single corporation, which, in case of merger, is a surviving corporation or, in case of consolidation, is a new corporation.
 - b. Subject to subdivision c and section 10-33-91, and except for the surviving corporation, the separate existence of the constituent corporations ends.
 - c. When the agreement of merger or consolidation expressly provides for the continuance of the corporate existence of a constituent corporation and expressly declares the purpose for the continuance, the corporate existence of the constituent corporation continues in the single corporation for the purpose declared in the agreement.
 - d. The single corporation has the rights, privileges, immunities, and powers, and is subject to the duties and liabilities, of a corporation formed under this chapter.
 - e. The single corporation has the rights, privileges, immunities, powers, and franchises, public and private, of each constituent corporation.
 - f. All real or personal property, debts, including debts arising from a subscription for membership, and interests belonging to each constituent corporation are transferred to the single corporation without further act or deed.
 - g. Interest in real estate possessed by a constituent corporation does not revert to the grantor, or otherwise, nor is it in any way impaired by reason of the merger or consolidation; and the personal property of a constituent corporation does not revert by reason of the merger or consolidation.
 - h. Except where the will or other instrument provides otherwise, and subject to section 10-33-95, a devise, bequest, gift, or grant contained in a will or other instrument, in trust or otherwise, made before or after the merger or consolidation has become effective, to or for any of the constituent corporations, inures to the single corporation.
 - i. Debts, liabilities, and obligations of each constituent corporation become the debts, liabilities, and obligations of the single

corporation, just as if the debts, liabilities, and obligations had been incurred or contracted by the single corporation.

- j. Existing claims or a pending action or proceeding by or against a constituent corporation may be prosecuted to judgment as though the merger or consolidation had not been effected, or the single corporation may be substituted for the constituent corporation.
 - k. The liabilities of the members, officers, directors, or similar groups or persons, however denominated, of a constituent corporation are not affected by the merger or consolidation of a constituent corporation.
 - l. The rights of creditors or liens upon the property of a constituent corporation are not impaired by the merger or consolidation, but the liens are limited to the property upon which they were liens immediately before the merger or consolidation.
 - m. The articles of the surviving corporation are considered to be amended to the extent that changes in its articles are contained in a plan of merger.
 - n. In the case of a consolidation, the plan of consolidation constitutes the articles of incorporation of the new corporation.
3. a. For purposes of this subsection, "fiduciary capacity" means the capacity of a trustee, executor, administrator, personal representative, guardian, conservator, receiver, escrow agent, agent for the investment of money, attorney-in-fact, or a similar capacity.
- b. Except where the will, declaration of trust, or other instrument provides otherwise, the single corporation is, without further act or deed, the successor of the constituent corporation in the fiduciary capacity in which a constituent corporation was acting at the time of the merger or consolidation and is liable to any beneficiary as fully as if the constituent corporation had continued its separate corporate existence.
 - c. If a constituent corporation is nominated and appointed, or has been nominated and appointed, in a fiduciary capacity in a will, declaration of trust, or other instrument, order, or judgment before or after the merger or consolidation, then even if the will or other instrument, order, or judgment does not become operative or effective until after the merger or consolidation becomes effective, every fiduciary capacity and the rights, powers, privileges, duties, discretions, and responsibilities provided for in the nomination or appointment fully vest in and are to be exercised by the single corporation, whether there are one or more successive mergers or consolidations.

10-33-91. Continuance of corporate authority. When an act or instrument is considered necessary or appropriate to evidence the vesting of property or other rights in the single corporation, the persons with authority to do so under the articles or bylaws of each constituent corporation shall do the act or execute and deliver the instrument and for this purpose, the existence of the constituent corporations and the authority of those persons is continued.

10-33-92. Merger or consolidation with foreign corporation.

1. A corporation may merge or consolidate with a foreign corporation by following the procedures set forth in this section, if the merger or consolidation is permitted by the laws of the state under which the foreign corporation is incorporated.
2. Each corporation shall comply with sections 10-33-85 through 10-33-91 with respect to the merger or consolidation of corporations and each foreign corporation shall comply with the laws under which it was incorporated or by which it is governed.
3. If the single corporation will be incorporated under this chapter, it shall comply with this chapter.
4. If the single corporation will be a foreign corporation and will conduct activities in this state, it shall comply with the provisions of sections 10-33-125 through 10-33-138 with respect to foreign corporations. In every case the single corporation shall file with the secretary of state:
 - a. An agreement that it may be served with process in this state in a proceeding for the enforcement of an obligation of a constituent corporation; and
 - b. An irrevocable appointment of the secretary of state as its agent to accept service of process in any proceeding and an address to which process may be forwarded.

10-33-93. Merger of corporation doing business as a hospital with a corporation organized for profit - Retention of property tax status. Notwithstanding any provision of chapter 10-19.1 and this chapter, a corporation doing business as a hospital may merge with a corporation incorporated for profit and form a corporation incorporated under this chapter.

1. Notwithstanding chapter 57-02 or any other provision of law, any interest in property of corporations merging under this section retains the same property tax status after the merger as it had in the taxable year before the merger.
2. Notwithstanding chapter 57-39.2 or 57-40.2 or any other provision of law, the sale, purchase, or use of any property by a corporation merging under this section retains the same status under the sales and use tax laws after the merger as it would have had before the merger.

10-33-94. Transfer of assets - When permitted.

1. Unless otherwise provided in its articles or bylaws, a corporation, by affirmative vote of the board, may sell, lease, transfer, or dispose of all or substantially all of its property and assets in the usual and regular course of its activities and, subject to subsection 1 of section 10-33-82, grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its activities, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board considers expedient, in which case no member approval is required.

2. A corporation, by affirmative vote of the board, may sell, lease, transfer, or dispose of all or substantially all of its property and assets, including its good will, not in the usual and regular course of its activities, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board considers expedient, when approved at a regular or special meeting of the members by the affirmative vote of the majority of the members with voting rights.
 - a. If there are not members with voting rights, member approval is not required.
 - b. Notice of the meeting must be given to the members with voting rights.
 - c. The notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation.
3. If applicable, a corporation shall comply with section 10-33-122 before transferring all or substantially all of its assets under this section.
4. Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current officers or, if the corporation no longer exists, by its last officers.
5. The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by this chapter or other statutes of this state.

10-33-95. Certain assets not to be diverted. When a corporation dissolves, merges or consolidates, transfers its assets, or grants a mortgage or other security interest in its assets, assets of the corporation or a constituent corporation, and assets subsequently received by a single corporation after a merger or consolidation, may not be diverted from the uses and purposes for which the assets have been received and held, or from the uses and purposes expressed or intended by the original donor.

10-33-96. Methods of dissolution.

1. Subject to section 10-33-122, a corporation may be dissolved:
 - a. By the incorporators under section 10-33-97;
 - b. By the board and members with voting rights under sections 10-33-98 through 10-33-103; or
 - c. By order of a court under sections 10-33-106 through 10-33-113.
2. A corporation also may be dissolved by the secretary of state under section 10-33-139.

10-33-97. Voluntary dissolution by incorporators.

1. If the first board has not been named in the articles, designated or appointed pursuant to the articles, or elected under section 10-33-25, a corporation may be dissolved by the incorporators as provided in this section.
2. A majority of the incorporators shall sign articles of dissolution containing:
 - a. The name of the corporation;
 - b. The date of incorporation;
 - c. A statement that the first board has not been:
 - (1) Named in the articles;
 - (2) Designated or appointed pursuant to the articles; or
 - (3) Elected at an organizational meeting;
 - d. A statement that no debts remain unpaid; and
 - e. A statement:
 - (1) That notice to the attorney general required by section 10-33-122 has been given and the waiting period:
 - (a) Has expired; or
 - (b) Has been waived by the attorney general; or
 - (2) That section 10-33-122 is not applicable.
3. The articles of dissolution must be filed with the secretary of state together with the fees provided in section 10-33-140.
4. When the articles of dissolution have been filed with the secretary of state, the corporation is dissolved.
5. The secretary of state shall issue to the dissolved corporation a certificate of dissolution that contains:
 - a. The name of the corporation;
 - b. The date the articles of dissolution were filed with the secretary of state; and
 - c. A statement that the corporation is dissolved.

10-33-98. Voluntary dissolution by board and members with voting rights.

1. A corporation may be dissolved by the board and members with voting rights as provided in this section.
2. The board shall adopt a resolution proposing dissolution of the corporation by the affirmative vote of a majority of all directors.

- a. The resolution must include a plan of dissolution that states to whom the assets owned or held by the corporation will be distributed after creditors are paid.
 - b. The plan must comply with the requirements of section 10-33-105.
 - c. If the board will have discretion in distributing assets, the plan must state that the assets will be distributed to persons the board subsequently identifies.
 - d. If there is a member with voting rights, the resolution and plan of dissolution must be submitted to the members under subsection 3.
3. With respect to approval by members with voting rights:
- a. Written notice:
 - (1) Must be given to each member with voting rights, within the time and in the manner provided in section 10-33-68 for notice of meetings of members; and
 - (2) Whether the meeting is a regular or a special meeting, must state that a purpose of the meeting is to consider dissolving the corporation.
 - b. The proposed dissolution must be submitted for approval at a meeting of members. If the proposed dissolution is approved by the members, the dissolution must be started.

10-33-99. Filing notice of intent to dissolve - Effect.

1. If dissolution of the corporation is approved under section 10-33-98, the corporation shall:
 - a. File with the secretary of state, together with the fees provided in section 10-33-140, a notice of intent to dissolve which must contain:
 - (1) The name of the corporation;
 - (2) The date and place of the meeting at which the resolution was approved by the board under subsection 2 of section 10-33-98, and by the members under subsection 3 of section 10-33-98, if applicable; and
 - (3) A statement that the requisite approval of the directors and members was received.
 - b. If applicable, notify the attorney general under section 10-33-122.
2. When the notice of intent to dissolve has been filed with the secretary of state and subject to section 10-33-104, the corporation may not carry on its activities, except to the extent necessary for the winding up of the corporation.
 - a. The board and members with voting rights have the right to revoke the dissolution proceedings under section 10-33-104.

- b. The members with voting rights have the right to remove directors or fill vacancies on the board.
 - c. The corporate existence continues to the extent necessary to wind up the affairs of the corporation until the dissolution proceedings are revoked or articles of dissolution are filed with the secretary of state.
 3. The filing with the secretary of state of a notice of intent to dissolve does not affect a remedy in favor of the corporation or a remedy against it or its directors, officers, or members in those capacities, except as provided in section 10-33-115.

10-33-100. Procedure in dissolution.

1. When a notice of intent to dissolve has been filed with the secretary of state, the board, or the officers acting under the direction of the board, shall proceed as soon as possible to collect or make provision for the collection of debts owing to the corporation and to pay or make provision for the payment of debts, obligations, and liabilities of the corporation according to their priorities.
2. Notwithstanding section 10-33-94, when a notice of intent to dissolve has been filed with the secretary of state, the directors may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of a dissolving corporation without a vote of the members, subject to sections 10-33-95 and 10-33-122.
3. Property, including money, remaining after the discharge of the debts, obligations, and liabilities of the corporation must be distributed under section 10-33-105.

10-33-101. Dissolution procedure for corporations that give notice to creditors and claimants. When a notice of intent to dissolve has been filed with the secretary of state and the attorney general, if applicable, the corporation may give notice of the filing to each creditor of and claimant against the corporation known or unknown, present or future, and contingent or noncontingent.

1. If notice to creditors and claimants is given, it must be given:
 - a. By publishing the notice once each week for four successive weeks in an official newspaper, as defined in chapter 46-06, in the county or counties where the registered office and the principal executive office of the corporation are located; and
 - b. By giving written notice to known creditors and claimants pursuant to subsection 18 of section 10-33-01.
2. a. The notice to creditors and claimants must contain:
 - (1) A statement that the corporation is in the process of dissolving;
 - (2) A statement that the corporation has filed with the secretary of state a notice of intent to dissolve;

- (3) The date of filing the notice of intent to dissolve;
 - (4) The address of the office to which written claims against the corporation must be presented; and
 - (5) The date by which all the claims must be received, which must be the later of:
 - (a) Ninety days after published notice; or
 - (b) With respect to a particular known creditor or claimant, ninety days after the date on which written notice was given to that creditor or claimant.
- b. Published notice is deemed given on the date of first publication for the purpose of determining this date.
3. With respect to claims against a corporation that gives notice to creditors and claimants:
 - a. The corporation has thirty days from the receipt of each claim filed according to the procedures set forth by the corporation on or before the date set forth in the notice to accept or reject the claim by giving written notice to the person submitting it. A claim not expressly rejected in this manner is deemed accepted.
 - b. A creditor or claimant to whom notice is given and whose claim is rejected by the corporation has:
 - (1) Sixty days from the date of rejection;
 - (2) One hundred eighty days from the date the corporation filed with the secretary of state the notice of intent to dissolve; or
 - (3) Ninety days after the date on which notice was given to the creditor or claimant, whichever is longer, to pursue any other remedies with respect to the claim.
 - c. A creditor or claimant to whom notice is given who fails to file a claim according to the procedures set forth by the corporation on or before the date set forth in the notice is barred from suing on that claim or otherwise realizing upon it or enforcing it, except as provided in section 10-33-115.
 - d. A creditor or claimant whose claim is rejected by the corporation under subdivision b is barred from suing on that claim or otherwise realizing upon or enforcing it, if the creditor or claimant does not initiate legal, administrative, or arbitration proceedings with respect to the claim within the time provided in subdivision b.
4. Articles of dissolution for a corporation dissolving under this section that has given notice to creditors and claimants must be filed with the secretary of state after compliance with section 10-33-122, if applicable, and:

- a. The ninety-day period in subdivision a of subsection 2 has expired and the payment of claims of all creditors and claimants filing a claim within that period has been made or provided for; or
 - b. The longest of the periods described in subdivision b of subsection 3 has expired and there are no pending legal, administrative, or arbitration proceedings by or against the corporation commenced within the time provided in subdivision b of subsection 3.
5. The articles of dissolution for a corporation that has given notice to creditors and claimants under this section must state:
- a. The last date on which the notice was given and:
 - (1) That the payment of all creditors and claimants filing a claim within the ninety-day period in subdivision a of subsection 2 has been made or provided for; or
 - (2) The date on which the longest of the periods described in subdivision b of subsection 3 expired;
 - b. That the remaining property, assets, and claims of the corporation have been distributed in accordance with section 10-33-105, or that adequate provision has been made for that distribution; and
 - c. That there are no pending legal, administrative, or arbitration proceedings by or against the corporation commenced within the time provided in subdivision b of subsection 3, or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

10-33-102. Dissolution procedure for corporations that do not give notice to creditors and claimants. When a notice of intent to dissolve has been filed with the secretary of state and the attorney general, if applicable, and the corporation has elected not to give notice to creditors and claimants in the manner provided in section 10-33-101:

1. Articles of dissolution for a corporation that has not given notice to creditors and claimants in the manner provided in section 10-33-101:
 - a. Must be filed with the secretary of state after compliance with section 10-33-122, if applicable, and:
 - (1) The payment of claims of all known creditors and claimants has been made or provided for; or
 - (2) At least two years have elapsed from the date of filing the notice of intent to dissolve.
 - b. Must state:
 - (1) If the articles of dissolution are being filed pursuant to paragraph 1 of subdivision a of subsection 1, that all known debts, obligations, and liabilities of the corporation have been

- paid and discharged or that adequate provision has been made for payment or discharge;
- (2) That the remaining property, assets, and claims of the corporation have been distributed in accordance with section 10-33-105, or that adequate provision has been made for that distribution; and
 - (3) There are no pending legal, administrative, or arbitration proceedings by or against the corporation, or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.
2. With respect to claims against corporations that do not give notice to creditors and claimants under 10-33-101:
- a. If a corporation has paid or provided for all known creditors or claimants at the time articles of dissolution are filed, a creditor or claimant who does not file a claim or pursue a remedy, in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of intent to dissolve is barred from suing on that claim or otherwise realizing upon or enforcing it.
 - b. If the corporation has not paid or provided for all known creditors and claimants at the time articles of dissolution are filed, a person who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of intent to dissolve is barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in section 10-33-115.

10-33-103. Filing of articles of dissolution - Effective date of dissolution - Certificate of dissolution.

1. An original of the articles of dissolution must be filed with the secretary of state, together with the fees provided in section 10-33-140. If the secretary of state finds that the articles of dissolution conform the secretary of state shall issue a certificate of dissolution.
2. When the certificate of dissolution has been issued by the secretary of state, the corporation is dissolved.
3. The secretary of state shall issue to the dissolved corporation, or its legal representative, a certificate of dissolution that contains:
 - a. The name of the corporation;
 - b. The date the articles of dissolution were filed with the secretary of state; and
 - c. A statement that the corporation was dissolved.

10-33-104. Revocation of dissolution proceedings.

1. As provided in this section, dissolution proceedings begun under section 10-33-98 may be revoked before the articles of dissolution are filed.
2. The board may adopt a resolution revoking the proposed dissolution by the affirmative vote of a majority of all directors. If there are members with voting rights, the resolution must be submitted to the members under subsection 3.
3. Written notice must be given to the members with voting rights within the time and in the manner provided in section 10-33-68 for notice of meetings of members and must state that a purpose of the meeting is to consider the advisability of revoking the dissolution proceedings.
 - a. The proposed revocation must be submitted to the members at the meeting.
 - b. If the proposed revocation is approved by the members with voting rights, the dissolution proceedings are revoked.
4. Revocation of dissolution proceedings is effective when a notice of revocation is filed with the secretary of state.
 - a. After the notice is filed, the corporation may resume business.
 - b. If notice to the attorney general has been given under section 10-33-122, the notice of revocation also must be given to the attorney general on or before the time that it is filed with the secretary of state.

10-33-105. Distribution of assets.

1. In performing the duties under section 10-33-100, the board, or the officers acting under the direction of the board, shall distribute the assets of the corporation in the following order of priority:
 - a. Distribution of assets received and held for a special use or purpose under subsection 2;
 - b. Payment of costs and expenses of the dissolution proceedings, including attorney fees and disbursements;
 - c. Payment of debts, obligations, and liabilities of the corporation;
 - d. Distribution of assets pursuant to articles or bylaws of the dissolving corporation or the rules or canons of another organization under subsection 3; and
 - e. Distribution of remaining assets under subsection 4.
2. Assets of the corporation may not be diverted from the uses and purposes for which the assets have been received and held, or from the uses and purposes expressed or intended by the original donor.
3. Where the articles or bylaws of the dissolving corporation, or the rules or canons of another organization by which the dissolving corporation is

bound, provide for a particular distribution of the assets of the dissolving corporation, the assets must be distributed accordingly.

4. The distribution of assets held for or devoted to a charitable or public use or purpose is subject to section 59-02-22.

10-33-106. Supervised voluntary dissolution. After the notice of intent to dissolve has been filed with the secretary of state and before a certificate of dissolution has been issued, the corporation, the attorney general, or, for good cause, a creditor or at least fifty members with voting rights or ten percent of the members with voting rights, whichever is less, may apply to a court within the county in which the principal executive office of the corporation is located to have the dissolution conducted or continued under the supervision of the court under sections 10-33-107 through 10-33-113.

10-33-107. Involuntary dissolution.

1. A court may grant equitable relief it considers just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and business:
 - a. In a supervised voluntary dissolution under section 10-33-106.
 - b. In an action by a director or at least fifty members with voting rights or ten percent of the members with voting rights, whichever is less, when it is established that:
 - (1) The directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the corporate affairs, the members cannot break the deadlock, and the corporation or the parties have not provided for a procedure to resolve the dispute;
 - (2) The directors or those in control of the corporation have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members in their capacities as members, directors, or officers;
 - (3) The members of the corporation are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors;
 - (4) The corporate assets are being misapplied or wasted; or
 - (5) The period of duration as provided in the articles has expired and has not been extended as provided in section 10-33-118.
 - c. In an action by a creditor when:
 - (1) The claim of the creditor has been reduced to judgment and an execution on it has been returned unsatisfied; or

(2) The corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation cannot pay its debts in the ordinary course of its activities.

d. In an action by the attorney general when it is established that:

- (1) The articles and certificate of incorporation were obtained through fraud;
- (2) The corporation should not have been formed under this chapter;
- (3) The corporation failed to comply with the requirements of sections 10-33-02 through 10-33-19 essential to incorporation under or election to become governed by this chapter;
- (4) The corporation has flagrantly violated a provision of this chapter, has violated a provision of this chapter more than once, or has violated more than one provision of this chapter;
- (5) The corporation has engaged in an unauthorized act, contract, conveyance, or transfer or has exceeded its powers;
- (6) The corporation has acted, or failed to act, in a manner that constitutes surrender or abandonment of the corporate purpose, franchise, privileges, or enterprise;
- (7) The corporation has liabilities and obligations exceeding the corporate assets;
- (8) The period of corporate existence has ended without extension;
- (9) The corporation has failed for a period of ninety days to pay fees, charges, or penalties required by this chapter;
- (10) The corporation has failed for a period of thirty days:
 - (a) To appoint and maintain a registered agent in this state;
or
 - (b) After changing its registered office to file with the secretary of state a statement of the change;
- (11) The corporation has answered falsely or failed to answer a reasonable written interrogatory from the secretary of state or the attorney general to the corporation, its officers, or directors;
- (12) The corporation has solicited property and has failed to use it for the purpose solicited; or
- (13) The corporation has fraudulently used or solicited property.

- e. An action may not be commenced under subdivision d until thirty days after notice to the corporation by the attorney general of the reason for the filing of the action. If the reason for filing the action is an act that the corporation has done, or omitted to do, and the act or omission may be corrected by an amendment of the articles or bylaws or by performance of or abstention from the act, the attorney general shall give the corporation thirty additional days in which to effect the correction before filing the action.
2. In determining whether to order equitable relief or dissolution under this section, the court shall consider the financial condition of the corporation but may not refuse to order equitable relief or dissolution solely on the ground that the corporation is solvent.
3. In deciding whether to order dissolution, the court shall consider whether lesser relief suggested by one or more parties, such as any form of equitable relief or a partial liquidation, would be adequate to permanently relieve the circumstances established under subdivision b, c, or d of subsection 1. Lesser relief may be ordered if it would be appropriate under the facts and circumstances of the case.
4. If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may award reasonable expenses, including attorneys' fees and disbursements, to any of the other parties.
5. Proceedings under this section must be brought in a court within the county in which the principal executive office of the corporation is located. It is not necessary to make members parties to the action or proceeding unless relief is sought against them personally.

10-33-108. Procedure in involuntary or supervised voluntary dissolution.

1. In dissolution proceedings the court may issue injunctions, appoint receivers with all powers and duties the court directs, take other actions required to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be held.
2. When a proceeding involving a corporation described in subsection 1 of section 10-33-122 is begun, the court shall order that a copy of the petition be served on the attorney general. In all proceedings under this section, the attorney general has a right to participate as a party.
3. After a full hearing has been held, upon whatever notice the court directs to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a receiver to collect the corporate assets. A receiver has authority, subject to the order of the court, to continue the business of the corporation and to sell, lease, transfer, or otherwise dispose of all or any of the property and assets of the corporation either at public or private sale.
4. The assets of the corporation or the proceeds resulting from a sale, lease, transfer, or other disposition must be applied in the following order of priority to the payment and discharge of:

- a. The costs and expenses of the proceedings, including attorneys' fees and disbursements;
 - b. Debts, taxes, and assessments due the United States, this state and its subdivisions, and other states and their subdivisions, in that order;
 - c. Claims duly proved and allowed to employees under title 65. Claims under this subdivision may not be allowed if the corporation carried workers' compensation insurance, as provided by law, at the time the injury was sustained;
 - d. Claims, including the value of all compensation paid in any medium other than money, duly proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any; and
 - e. Other claims duly proved and allowed.
5. After payment of the expenses of receivership and claims of creditors duly proved, the remaining assets, if any, must be distributed in accordance with section 10-33-105.

10-33-109. Qualifications of receivers - Powers.

1. A receiver must be an individual or organization authorized to transact business or conduct activities in this state. A receiver shall give bond as directed by the court with the sureties required by the court.
2. A receiver may sue and defend in all courts as receiver of the corporation. The court appointing the receiver has exclusive jurisdiction of the corporation and its property.

10-33-110. Filing claims in proceedings to dissolve.

1. In proceedings referred to in section 10-33-107 to dissolve a corporation, the court may require all creditors and claimants of the corporation to file their claims under oath with the clerk of court or with the receiver in a form prescribed by the court.
2. If the court requires the filing of claims, it shall fix a date, which may not be less than one hundred twenty days from the date of the order, as the last day for the filing of claims, and shall prescribe the notice of the fixed date that must be given to creditors and claimants. Before the fixed date, the court may extend the time for filing claims. Creditors and claimants failing to file claims on or before the fixed date may be barred, by order of court, from claiming an interest in or receiving payment out of the property or assets of the corporation.

10-33-111. Discontinuance of dissolution proceedings. The involuntary or supervised voluntary dissolution of a corporation must be discontinued at any time during the dissolution proceedings when it is established that cause for dissolution no longer exists. When this is established, the court shall dismiss the proceedings and direct the receiver, if any, to redeliver to the corporation all its remaining property and assets.

10-33-112. Decree of dissolution.

1. In an involuntary or supervised voluntary dissolution, the court shall provide for the discharge of obligations and the distribution of the assets as set forth in subsection 4 of section 10-33-108, and shall enter a decree dissolving the corporation.
2. When the decree dissolving the corporation has been entered, the corporation is dissolved.

10-33-113. Filing decree. After the court enters a decree dissolving a corporation, the clerk of court shall cause a certified copy of the decree to be filed with the secretary of state. The secretary of state may not charge a fee for filing the decree.

10-33-114. Deposit with administrator of abandoned property of amount due certain persons - Appropriation. Upon dissolution of a corporation, the portion of the assets distributable to a person who is unknown or cannot be found must be reduced to money and deposited with the administrator of abandoned property for disposition pursuant to chapter 47-30.1. The amount deposited is appropriated to the administrator of abandoned property and must be paid over to the person or a legal representative, upon proof satisfactory to the administrator of abandoned property of a right to payment.

10-33-115. Claims barred - Exceptions.

1. A person who is or becomes a creditor or claimant at any time before, during, or following the conclusion of dissolution proceedings, who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within the time provided in section 10-33-101, 10-33-102, 10-33-106, 10-33-107, or 10-33-110, or has not begun a legal, administrative, or arbitration proceeding before the beginning of the dissolution proceedings, and a person claiming through or under the creditor or claimant, is barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in this section.
2. At any time within one year after articles of dissolution have been filed with the secretary of state under subsection 4 of section 10-33-101 or subsection 1 of section 10-33-102 or a decree of dissolution has been entered, a creditor or claimant who shows good cause for not having previously filed the claim may apply to a court in this state to allow a claim against the corporation to the extent of undistributed assets.
3. All known contractual debts, obligations, and liabilities incurred during dissolution proceedings must be paid by the corporation before the distribution of assets under section 10-33-105. A person to whom this kind of debt, obligation, or liability is owed but not paid may pursue any remedy against the officers or directors of the corporation before the expiration of the applicable statute of limitations. This subsection does not apply to dissolution under the supervision or order of a court.

10-33-116. Right to sue or defend after dissolution. After a corporation has been dissolved, any of its former officers, directors, or members with voting rights may assert or defend, in the name of the corporation, any claim by or against the corporation.

10-33-117. Omitted assets. Title to assets remaining after payment of all debts, obligations, or liabilities and after all distributions pursuant to section 10-33-105 may be transferred by a court in this state.

10-33-118. Extension after duration expired.

1. A corporation whose period of duration as provided in the articles has expired and which has continued to operate despite that expiration may reinstate its articles and extend the period of corporate duration, including making the duration perpetual, within one year after the date of expiration by filing an amendment to the articles as set forth in this section.
2. An amendment to the articles must be approved by the board and must include:
 - a. The date on which the period of duration expired under the articles;
 - b. A statement that the period of duration will be perpetual or, if some shorter period is to be provided, the date to which the period of duration is extended;
 - c. A statement that the corporation has been in continuous operation since before the date of expiration of its original period of duration; and
 - d. A name change if the name of the corporation has been adopted for use or reserved by another person.
3. If the corporation has a member with voting rights, the amendment to the articles must be presented, after notice, to a meeting of the members with voting rights. The amendment is adopted when approved by the members with voting rights pursuant to section 10-33-15.
4. Articles of amendment, together with any fees and delinquent filings and reports, conforming to section 10-33-16 must be filed with the secretary of state.

10-33-119. Effect of extension. Filing with the secretary of state of articles of amendment extending the period of duration of a corporation:

1. Relates back to the date of expiration of the original period of duration of the corporation as provided in the articles;
2. Validates contracts or other acts within the authority of the articles, and the corporation is liable for those contracts or acts; and
3. Restores to the corporation all the assets and rights of the corporation to the extent they were held by the corporation before expiration of its original period of duration, except those sold or otherwise distributed after that time.

10-33-120. Service of process on corporation and nonresident directors.

1. The registered agent must be an agent of the corporation and any nonresident director upon whom any process, notice, or demand

required or permitted by law to be served on the corporation or director may be served. Acceptance of a directorship includes the appointment of the secretary of state as an agent for personal service of legal process, notice, or demand.

2. A process, notice, or demand required or permitted by law to be served upon a corporation may be served either upon the registered agent of the corporation, or upon an officer of the corporation, or upon the secretary of state as provided in this section.
3. If neither the corporation's registered agent nor an officer of the corporation can be found at the registered office, or if a corporation fails to maintain a registered agent in this state and an officer of the corporation cannot be found at the registered office, then the secretary of state is the agent of the corporation upon whom the process, notice, or demand may be served. The return of the sheriff, or the affidavit of a person who is not a party, that no registered agent or officer can be found at the registered office must be provided to the secretary of state. Service on the secretary of state of any process, notice, or demand is deemed personal service upon the corporation and must be made by filing with the secretary of state an original and two copies of the process, notice, or demand, along with the fees provided in section 10-33-140. The secretary of state shall immediately forward, by registered mail, addressed to the corporation at its registered office, a copy of the process, notice, or demand. Service on the secretary of state is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.
4. Process, notice, or demand may be served on a dissolved corporation as provided in this subsection. The court shall determine if service is proper. If a corporation has voluntarily dissolved or a court has entered a decree of dissolution, service may be made according to subsection 2 as long as claims are not finally barred under section 10-33-115. If a corporation has been involuntarily dissolved pursuant to section 10-33-139, service may be made according to subsection 2.
5. A record of all processes, notices, and demands served upon the secretary of state under this section, including the date of service and the action taken with reference to it, must be maintained in the office of the secretary of state.
6. Nothing in this section limits the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner permitted by law.

10-33-121. State interested - Proceedings. If it appears at any stage of a proceeding in a court in this state that the state is, or is likely to be, interested therein, or that it is a matter of general public interest, the court shall order that a copy of the complaint or petition be served upon the attorney general in the same manner prescribed for serving a summons in a civil action. The attorney general shall intervene in a proceeding when the attorney general determines that the public interest requires it, whether or not the attorney general has been served.

10-33-122. Attorney general - Notice to - Waiting period.

1. Except as provided in subsection 7, the following corporations shall notify the attorney general of their intent to dissolve, merge, or consolidate, or to transfer all or substantially all of their assets:
 - a. A corporation that holds assets for a charitable purpose.
 - b. A corporation that is exempt under section 501(c)(3) of the Internal Revenue Code.
2. The notice must be signed on behalf of the corporation by an authorized person and must include:
 - a. The purpose of the corporation that is giving the notice;
 - b. A list of assets owned or held by the corporation for charitable purposes;
 - c. A description of restricted assets and purposes for which the assets were received;
 - d. A description of debts, obligations, and liabilities of the corporation;
 - e. A description of tangible assets being converted to cash and the manner in which they will be sold;
 - f. Anticipated expenses of the transaction, including attorneys' fees;
 - g. A list of persons to whom assets will be transferred, if known;
 - h. The purposes of persons receiving the assets; and
 - i. The terms, conditions, or restrictions, if any, to be imposed on the transferred assets.
3. Subject to subsection 4, a corporation described in subsection 1 may not transfer or convey assets as part of a dissolution, merger, or consolidation, or transfer of assets under section 10-33-94 until forty-five days after it has given written notice to the attorney general, unless the attorney general waives all or part of the waiting period.
4. The attorney general may extend the waiting period under subsection 3 for one additional thirty-day period by notifying the corporation in writing of the extension. The attorney general shall notify the secretary of state if the waiting period is extended.
5. When all or substantially all of the assets of a corporation described in subsection 1 have been transferred or conveyed following expiration or waiver of the waiting period, the board shall deliver to the attorney general a list of persons to whom the assets were transferred or conveyed. The list must include the addresses of each person who received assets and show what assets the person received.
6. Failure of the attorney general to take an action with respect to a transaction under this section does not constitute approval of the transaction and does not prevent the attorney general from taking other action.

7. Subsections 1 through 5 do not apply to a merger with, consolidation into, or transfer of assets to an organization exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section. A corporation that is exempt under this subsection shall send a copy of the certificate of merger or certificate of consolidation and incorporation to the attorney general.

10-33-123. Powers of attorney general.

1. When it appears to the attorney general it is in the public interest that an investigation should be made to ascertain whether a proceeding by the attorney general, as provided in this chapter, should be commenced, the attorney general may:
 - a. Examine under oath any person in connection with the affairs of the corporation.
 - b. Examine any record, book, document, account, or paper as the attorney general determines necessary.
 - c. Pursuant to an order of the district court, impound any record, book, document, account, or paper, and retain it in the attorney general's possession until the completion of all proceedings undertaken under this chapter.
2. To accomplish the objectives and to carry out the duties prescribed by this chapter, the attorney general may issue subpoenas to any person.
3. If any person fails or refuses to file any statement or report, or obey any subpoena, the attorney general may apply to the district court for an order enforcing the subpoena or other investigation demand. Failure to comply with the order of the district court is contempt of court.

10-33-124. Certified nonprofit development corporation - Application - Income tax credit.

1. For the purposes of this section:
 - a. "Certified nonprofit development corporation" means a corporation organized under this chapter which meets the following requirements:
 - (1) Is certified by the secretary of state under this section;
 - (2) Invests a majority of its funds in primary sector businesses; and
 - (3) No part of the income is distributable to its members, directors, or officers.
 - b. "Primary sector business" means an individual, corporation, limited liability company, partnership, or association that, through a process employing knowledge and labor, adds value to a product produced for resale.

2. A corporation may apply to the secretary of state to become a certified nonprofit development corporation by submitting an application executed by an officer of the corporation containing:
 - a. The name of the corporation and the address of its principal executive office;
 - b. The names and addresses of the officers and directors of the corporation; and
 - c. A statement that the corporation has adopted a resolution to invest a majority of membership payments, dues, or contributions received in primary sector businesses. A copy of the resolution must be submitted with the application to the secretary of state together with the fees provided in section 10-33-140.
3. Upon receipt by the secretary of state of the completed application and fee, the secretary of state shall certify the applicant as a certified nonprofit development corporation.
4.
 - a. An individual or a corporation that buys membership in, or pays dues or contributes to a nonprofit development corporation is entitled to an income tax credit equal to twenty-five percent of the amount paid.
 - b. This credit may not be claimed by an individual who elects to file an income tax return under section 57-38-30.3 or by a corporation that is recognized as a subchapter S corporation under section 57-38-01.4.
 - c. No taxpayer is entitled to more than two thousand dollars in total income tax credits under this section.
 - d. The amount of the credit under this section in excess of the taxpayer's income tax liability may be carried forward for up to seven taxable years.
5.
 - a. Within thirty days of the date on which a taxpayer buys membership in, or pays dues or contributes to a certified nonprofit development corporation, the certified nonprofit development corporation must complete and file with the tax commissioner a form prescribed by the tax commissioner setting forth:
 - (1) The name, address, and social security number or federal employer identification number of the taxpayer making the payment;
 - (2) The dollar amount paid by the taxpayer;
 - (3) The date the certified nonprofit development corporation received the payment from the taxpayer;
 - (4) The name, address, and federal employer identification number of the certified nonprofit development corporation; and

(5) The signature and title of an officer authorized to act on behalf of the corporation.

b. Two copies of this form must be provided to the taxpayer. To receive the credit, the taxpayer must attach one copy of the form to the taxpayer's income tax return.

10-33-125. Foreign corporation - Governing law.

1. Subject to the constitution of this state, the laws of the jurisdiction under which a foreign corporation is incorporated govern its incorporation and internal affairs. Nothing in this chapter authorizes this state to regulate the incorporation or internal affairs of a foreign corporation.
2. A foreign corporation may not be denied a certificate of authority to conduct activities in this state by reason of any difference between those laws and the laws of this state.
3. A foreign corporation holding a valid certificate of authority in this state has no greater rights and privileges than a corporation. The certificate of authority does not authorize the foreign corporation to exercise any of its powers or purposes that a corporation is forbidden by law to exercise in this state.

10-33-126. Foreign corporation - Name. A foreign corporation may apply for a certificate of authority under any name that would be available to a corporation, whether or not the name is the name under which it is authorized in its jurisdiction of incorporation. A trade name must be registered as provided in chapter 47-25 when applying for the certificate of authority under a name other than the name as authorized in the jurisdiction of incorporation.

10-33-127. Foreign corporation - Admission of foreign corporation conducting activities - Obtaining licenses and permits. A foreign corporation may not:

1. Conduct activities in this state or obtain any license or permit required by this state until it has procured a certificate of authority from the secretary of state.
2. Conduct in this state any activity that is prohibited to a corporation incorporated under this chapter.
3. Be denied a certificate of authority because the laws of the state or country where the corporation is incorporated differ from the laws of this state.

10-33-128. Foreign corporation application for certificate of authority.

1. An applicant for the certificate shall file with the secretary of state a certificate of status from the filing office in the jurisdiction in which the foreign corporation is incorporated and an application executed by an authorized person and setting forth:
 - a. The name of the foreign corporation and if different, the name under which it proposes to conduct activities in this state;
 - b. The jurisdiction of its incorporation;

- c. The date of incorporation in the jurisdiction of its incorporation and the period of duration of the foreign corporation;
 - d. The address of the principal executive office of the foreign corporation in the jurisdiction where it is incorporated;
 - e. The address of the proposed registered office of the foreign corporation in this state;
 - f. The name of the proposed registered agent in this state that is:
 - (1) An individual resident of this state;
 - (2) A corporation whether incorporated under this chapter or under another provision of this code; or
 - (3) A foreign corporation having a place of business in, and authorized to conduct activities in, this state whether authorized to conduct activities in this state under this chapter or under another provision of this code;
 - g. The purpose or purposes of the foreign corporation which it proposes to pursue in conducting its activities in this state;
 - h. The names and addresses of the directors and officers of the foreign corporation; and
 - i. Any additional information deemed necessary or appropriate by the secretary of state to enable the secretary of state to determine whether the foreign corporation is entitled to a certificate of authority to conduct activities in this state.
2. The application must be accompanied by payment of the fees provided in section 10-33-140 together with a certificate of good standing or a certificate of existence duly authenticated by the incorporating officer of the state or country where the corporation is incorporated and the consent of the designated registered agent for service of process to serve in that capacity.

10-33-129. Foreign corporation - Issuance of certificate of authority. If the secretary of state finds that an application for a certificate of authority conforms to law and that all fees have been paid, the secretary shall:

1. Endorse on the application the word "filed" and the date of the filing;
2. File the application, the certificate of good standing or certificate of existence, and the consent of the registered agent; and
3. Issue to the corporation or its representative a certificate of authority to conduct activities in this state.

10-33-130. Foreign corporation - Amendments to the certificate of authority. If any statement in the application for a certificate of authority by a foreign corporation was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign corporation shall promptly file with the secretary of state an application for an amended

certificate of authority executed by an authorized person correcting the statement and, in the case of a change in its name, a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign corporation is incorporated. In the case of a dissolution or merger, a foreign corporation that is not the surviving organization need not file an application for an amended certificate of authority but shall promptly file with the secretary of state a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign corporation is incorporated.

10-33-131. Foreign corporation - Registered agent - Registered office - Certain reports. A foreign corporation authorized to conduct activities in this state must:

1. Establish and continuously maintain a registered office in the same manner as provided in section 10-33-12;
2. Appoint and continuously maintain a registered agent in the same manner as provided in section 10-33-12; and
3. File a report upon the establishment of or any change in the address of its registered office or upon the designation of or change in the name or address of its registered agent in the same manner as provided in section 10-33-13.

10-33-132. Foreign corporation - Merger of foreign corporation authorized to conduct activities in this state. Whenever a foreign corporation authorized to conduct activities in this state is a party to a statutory merger permitted by the laws of the jurisdiction under which it is incorporated, and the corporation is not the surviving organization, the surviving organization shall, within thirty days after the merger becomes effective, file with the secretary of state a certified statement of merger duly authenticated by the proper officer of the state or country where the statutory merger was effected. It is not necessary for any foreign organization, which is the surviving organization in a merger, to procure either a new or amended certificate of authority to conduct activities in this state unless the name of the organization is changed thereby or unless the organization desires to pursue in this state purposes other than those which it is authorized to transact in this state.

10-33-133. Foreign corporation - Certificate of withdrawal.

1. A foreign corporation authorized to conduct activities in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure the certificate, the foreign corporation shall file with the secretary of state an application for withdrawal, together with the fees provided in section 10-33-140, which must set forth:
 - a. The name of the corporation and the state or country under the laws of which it is incorporated;
 - b. That the corporation is not conducting activities in this state;
 - c. That the corporation surrenders its authority to conduct activities in this state;
 - d. That the corporation revokes the authority of its registered agent in this state to accept service of process and consents to that service of

process on the corporation by service upon the secretary of state in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to conduct activities in this state; and

- e. A post-office address to which a person may mail a copy of any process against the corporation.
2. The filing with the secretary of state of a certificate of dissolution, or a certificate of merger if the corporation is not the surviving organization, from the proper officer of the state or country under the laws of which the corporation is incorporated constitutes a valid application of withdrawal and the authority of the corporation to conduct activities in this state shall cease upon filing of the certificate.

10-33-134. Foreign corporation - Revocation of certificate of authority.

1. The certificate of authority of a foreign corporation to conduct activities in this state may be revoked by the secretary of state if:
 - a. The foreign corporation has failed to:
 - (1) Maintain a registered office as required by this chapter;
 - (2) Appoint and maintain a registered agent as required by this chapter;
 - (3) File a report upon any change in the address of its registered office;
 - (4) File a report upon any change in the name or business address of the registered agent; or
 - (5) File in the office of the secretary of state any amendment to its application for a certificate of authority as specified in section 10-33-130; or
 - b. A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by the foreign corporation pursuant to this chapter.
2. No certificate of authority of a foreign corporation may be revoked by the secretary of state unless:
 - a. The secretary has given the foreign corporation not less than sixty days' notice by mail addressed to its registered office in this state or, if the foreign corporation fails to appoint and maintain a registered agent in this state, addressed to its principal executive office; and
 - b. During the sixty-day period, the foreign corporation has failed to file the report of change regarding the registered office or the registered agent, to file any amendment, or to correct the misrepresentation.
3. Upon the expiration of sixty days after the mailing of the notice, the authority of the foreign corporation to conduct activities in this state

ceases. The secretary of state shall issue a certificate of revocation and shall mail the certificate to the principal executive office of the foreign corporation.

10-33-135. Foreign corporation - Conduct of activity without certificate of authority - Civil penalty.

1. A foreign corporation conducting activities in this state may not maintain any action, suit, or proceeding in any court of this state until it possesses a certificate of authority.
2. The failure of a foreign corporation to obtain a certificate of authority does not impair the validity of any contract or act of the foreign corporation or prevent the foreign corporation from defending any action, suit, or proceeding in any court of this state.
3. A foreign corporation, by conducting activities in this state without a certificate of authority, appoints the secretary of state as its agent upon whom any notice, process, or demand may be served.
4. A foreign corporation that conducts activities in this state without a valid certificate of authority is liable to the state for the years or parts of years during which it conducted activities in this state without the certificate in an amount equal to all fees that would have been imposed by this chapter upon that corporation had it duly obtained the certificate, filed all reports required by this chapter, and paid all penalties imposed by this chapter. The attorney general shall bring proceedings to recover all amounts due this state under this section.
5. A foreign corporation that conducts activities in this state without a valid certificate of authority is subject to a civil penalty, payable to the state, not to exceed five thousand dollars. Each director and each officer or agent who authorizes, directs, or participates in the conduct of activity in this state on behalf of a foreign corporation that does not have a certificate is subject to a civil penalty, payable to the state, not to exceed one thousand dollars.
6. The civil penalties set forth in subsection 5 may be recovered in an action brought within the district court of Burleigh County by the attorney general. Upon a finding by the court that a foreign corporation or any of its members, directors, officers, or agents have conducted activities in this state in violation of this chapter, the court shall issue, in addition to the imposition of a civil penalty, an injunction restraining the further conduct of the activity of the foreign corporation and the further exercise of any rights and privileges by the corporation in this state. The foreign corporation must be enjoined from conducting activities in this state until all civil penalties plus any interest and court costs that the court may assess have been paid and until the foreign corporation has otherwise complied with this chapter.
7. A member of a foreign corporation is not liable for the debts and obligations of the corporation solely by reason of the corporation having conducted activity in this state without a valid certificate of authority.

10-33-136. Foreign corporation - Conduct not constituting conducting activities.

1. The following activities of a foreign corporation, among others, do not constitute conducting activity within the meaning of this chapter:
 - a. Maintaining, defending, or settling any proceeding;
 - b. Holding meetings of its members or carrying on any other activities concerning its internal affairs;
 - c. Maintaining bank accounts;
 - d. Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;
 - e. Securing or collecting debts or enforcing mortgages and security interests in property securing the debts; or
 - f. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like manner.
2. The term "conducting activity" as used in this section has no effect on personal jurisdiction under the North Dakota Rules of Civil Procedure.
3. For purposes of this section, any foreign corporation that owns income-producing real or tangible personal property in this state, other than property exempted under subsection 1, is considered conducting activity in this state.
4. The list of activities in subsection 1 is not exhaustive. This section does not apply in determining the contracts or activities that may subject a foreign corporation to service of process or taxation in this state or to regulation under any other law of this state.

10-33-137. Foreign corporation - Action by attorney general. The attorney general may bring an action to restrain a foreign corporation from conducting activity in this state in violation of this chapter.

10-33-138. Foreign corporation - Service of process. Service of process on a foreign corporation must be as provided in section 10-33-120. When the certificate of authority of a foreign corporation is suspended or revoked, the secretary of state is an agent of the foreign corporation for service of process, notice, or demand.

10-33-139. Secretary of state - Annual report of corporations and foreign corporations.

1. Each corporation, and each foreign corporation authorized to conduct activities in this state, shall file, within the time prescribed by subsection 3, an annual report setting forth:
 - a. The name of the corporation or foreign corporation and the state or country under the laws of which it is incorporated.
 - b. The address of the registered office of the corporation or foreign corporation in this state, the name of its registered agent in this state at that address, and the address of its principal executive office.

- c. A brief statement of the character of the activities in which the corporation or foreign corporation is actually engaged in this state.
 - d. The names and respective addresses of the officers and directors of the corporation or foreign corporation.
 - e. The section of the Internal Revenue Code by which its tax status is established.
2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as prescribed in subsection 24 of section 10-33-01 or in the articles or bylaws, or in a resolution approved by the affirmative vote of the required proportion or number of the directors or members entitled to vote. If the corporation or foreign corporation is in the hands of a receiver or trustee, it must be signed on behalf of the corporation or foreign corporation by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.
3. The annual report must be delivered to the secretary of state before February first of each year, except that the first annual report must be delivered before February first of the year following the calendar year in which the certificate of incorporation or certificate of authority was issued by the secretary of state.
- a. An annual report in a sealed envelope postmarked by the United States postal service before February first, or an annual report in a sealed packet with a verified shipment date by any other carrier service before February first, complies with this requirement. When the filing date falls on a Saturday or holiday as defined in section 1-03-01, a postmark or verified shipment date on the next business day complies with this requirement.
 - b. The secretary of state must file the report if the report conforms to the requirements of subsection 2.
 - (1) If the report does not conform, it must be returned to the corporation for any necessary corrections.
 - (2) If the report is filed before the deadlines prescribed in this subsection, penalties for the failure to file a report within the time provided do not apply, if the report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction.
 - c. The secretary of state may extend the annual filing date of any corporation or foreign corporation if a written application for an extension is delivered before February first.
4. After the date established under subsection 3, the secretary of state shall notify any corporation or foreign corporation failing to file its annual report that its certificate of incorporation or certificate of authority is not in good standing and that it may be dissolved or revoked pursuant to

subsections 5 and 6. The secretary of state must mail the notice to the last registered agent at the last registered office of record. If the corporation or foreign corporation files its annual report after the notice is mailed, together with the annual report filing fee and late filing penalty fee as prescribed by section 10-33-140, the secretary of state shall restore its certificate of incorporation or certificate of authority to good standing.

5. A corporation that does not file its annual report, along with the statutory filing and penalty fees, within one year after the date established in subsection 3 ceases to exist and is considered involuntarily dissolved by operation of law.
 - a. The secretary of state shall note the termination of the corporation's certificate of incorporation on the records of the secretary of state and shall give notice of the action to the dissolved corporation.
 - b. Notice by the secretary of state must be mailed to the last registered agent at the last registered office of record.
6. A foreign corporation that does not file its annual report, along with the statutory filing and penalty fees, within one year after the date established by subsection 3 forfeits its authority to conduct activities in this state.
 - a. The secretary of state shall note the revocation of the foreign corporation's certificate of authority on the records of the secretary of state and shall give notice of the action to the foreign corporation.
 - b. Notice by the secretary of state must be mailed to the foreign corporation's last registered agent at the last registered office of record.
 - c. The decision by the secretary of state that a certificate of authority must be revoked under this subsection is final.
7. A corporation that was dissolved for failure to file an annual report, or a foreign corporation whose authority was forfeited by failure to file an annual report, may be reinstated by filing a past-due report, together with the statutory filing and penalty fees for an annual report and a reinstatement fee as prescribed in section 10-33-140. The fees must be paid and the report filed within one year following the involuntary dissolution or revocation. Reinstatement under this subsection does not affect the rights or liability for the time from the dissolution or revocation to the reinstatement.
8. The secretary of state may waive any penalties provided in the section when an annual report form could not be delivered to the corporation.

10-33-140. Secretary of state - Fees and charges.

1. The secretary of state shall charge and collect for:
 - a. Filing articles of incorporation and issuing a certificate of incorporation, thirty dollars.

- b. Filing articles of amendment, twenty dollars.
 - c. Filing restated articles of incorporation, thirty dollars.
 - d. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifty dollars.
 - e. Filing an intent to dissolve, ten dollars.
 - f. Filing articles of dissolution, twenty dollars.
 - g. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.
 - h. Filing a registered agent's consent to serve in that capacity, ten dollars.
 - i. Filing a resignation as registered agent, ten dollars.
 - j. Filing an application to reserve a corporate name, ten dollars.
 - k. Filing a notice of transfer of a reserved corporate name, ten dollars.
 - l. Filing a cancellation of reserved corporate name, ten dollars.
 - m. Filing a consent to use of a deceptively similar name, ten dollars.
 - n. Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, forty dollars.
 - o. Filing an application of a foreign corporation for an amended certificate of authority, forty dollars.
 - p. Filing a certified statement of merger of a foreign corporation holding a certificate of authority to conduct activities in this state, fifty dollars.
 - q. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars.
 - r. Filing an annual report of a domestic or foreign corporation, ten dollars. The secretary of state shall charge and collect additional fees for late filing of the annual report:
 - (1) After the date prescribed in subsection 3 of section 10-33-140, five dollars; and
 - (2) After the dissolution of a corporation, or the revocation of the certificate of authority of a foreign corporation, the reinstatement fee of forty dollars.
 - s. Filing any other statement of a domestic or foreign corporation, ten dollars.
2. The secretary of state shall charge and collect:

- a. For furnishing a certified copy of any document, instrument, or paper relating to a corporation, one dollar for every four pages or fraction thereof and fifteen dollars for the certificate and affixing the seal to the certificate.
- b. At the time of any service of process on the secretary of state as resident agent of a corporation, twenty-five dollars, which may be recovered as taxable costs by the party to the claim for relief causing the service to be made if that party prevails in the suit or action.

10-33-141. Secretary of state - Enforcement - Penalty - Appeal.

1. The secretary of state may administer this chapter.
2. The secretary of state may propound to any corporation or foreign corporation that is subject to this chapter and to any officer, director, or employee thereof, any interrogatory as may be reasonably necessary and proper to ascertain whether the corporation has complied with this chapter applicable to the corporation.
 - a. The interrogatory must be answered within thirty days after mailing, or within any additional time as must be fixed by the secretary of state. The answers to the interrogatory must be full and complete and must be made in writing and under oath.
 - b. If the interrogatory is directed:
 - (1) To an individual, it must be answered by that individual; or
 - (2) To a corporation, it must be answered by the president, vice president, secretary, or assistant secretary of the corporation.
 - c. The secretary of state need not file any document to which the interrogatory relates until the interrogatory has been answered, and not then if the answers disclose that the document is not in conformity with this chapter.
 - d. The secretary of state shall certify to the attorney general, for action the attorney general may deem appropriate, an interrogatory and answers thereto, which discloses a violation of this chapter.
 - e. Each officer, director, or employee of a corporation or foreign corporation who fails or refuses within the time provided by subdivision a of subsection 2 to answer truthfully and fully an interrogatory propounded to that person by the secretary of state is guilty of an infraction.
 - f. An interrogatory propounded by the secretary of state and the answers are not open to public inspection. The secretary of state may not disclose any facts or information obtained from the interrogatory or answers except insofar as may be permitted by law or insofar as is required for evidence in any criminal proceedings or other action by this state.

3. If the secretary of state rejects any document required by this chapter to be approved by the secretary of state before the document may be filed, then the secretary of state shall give written notice of the rejection to the person who delivered the document, specifying the reasons for rejection.
 - a. From such rejection the person may appeal to the district court of the county in which the registered office of such corporation is, or is proposed to be, situated by filing with the clerk of the court a petition setting forth a copy of the document sought to be filed and a copy of the written rejection of the document by the secretary of state.
 - b. The matter must be tried de novo by the court. The court shall either sustain the action of the secretary of state or direct the secretary of state to take the action the court determines proper.
4. If the secretary of state revokes the certificate of authority to conduct activities in this state of any foreign corporation, pursuant to section 10-33-134, then, the foreign corporation may appeal to the district court of the county where the registered office of the foreign corporation in this state is situated by filing with the clerk of the court a petition setting forth a copy of the corporation's certificate of authority to conduct activities in this state and a copy of the notice of revocation given by the secretary of state. The matter must be tried de novo by the court. The court shall sustain the action of the secretary of state or shall direct the secretary of state to take the action the court determines proper.
5. Appeals from all final orders and judgments entered by the district court under this section in review of any ruling or decision of the secretary of state may be taken as in other civil actions.

10-33-142. Secretary of state - Evidence.

1. All certificates issued by the secretary of state and all copies of documents filed in accordance with this chapter, when certified by the secretary of state, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts stated.
2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts stated.

10-33-143. Secretary of state - Forms. All annual reports required by this chapter to be filed in the office of the secretary of state must be made on forms prescribed by the secretary of state. Forms for all other documents to be filed in the office of the secretary of state may be furnished by the secretary of state upon request. However, the use of the forms, unless otherwise specifically required by law, is not mandatory.

SECTION 2. AMENDMENT. Subsection 2 of section 11-10-24 of the North Dakota Century Code is amended and reenacted as follows:

2. The organization or organizations authorized hereunder ~~shall~~ must be organized pursuant to ~~chapters 10-24 through 10-28~~ chapter 10-33.

³ **SECTION 3. AMENDMENT.** Section 14-03-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-03-09. Who may solemnize marriages. Marriages may be solemnized by all judges of courts of record within their respective jurisdictions, by clerks of district court, by ordained ministers of the gospel and priests of every church, by ministers of the gospel licensed by regular church bodies or denominations and serving as pastors of churches, and by any person authorized by the forms and usages of any church or religious denomination or organization organized or possessing a certificate of authority pursuant to ~~chapters 10-24 through 10-28~~ chapter 10-33.

SECTION 4. AMENDMENT. Section 15-17-01 of the North Dakota Century Code is amended and reenacted as follows:

15-17-01. Institutional holding associations authorized. Nonprofit corporations to be known as institutional holding associations may be formed in the manner, for the purposes, and with the powers, obligations, and limitations prescribed by the applicable provisions of ~~chapters 10-24 through 10-28~~ chapter 10-33, except as otherwise provided in this chapter.

SECTION 5. AMENDMENT. Section 18-05-01 of the North Dakota Century Code is amended and reenacted as follows:

18-05-01. Firemen's relief association - Where it may be organized. A firemen's relief association may be organized in any city which has a paid fire department. In organizing such association, the procedure provided in ~~chapters 10-24 and 10-28~~ chapter 10-33 must be followed.

SECTION 6. AMENDMENT. Section 26.1-14-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-14-03. Authority. An incorporated mutual insurance company is authorized to be known as the North Dakota medical malpractice mutual insurance company. The company is subject to and governed by this chapter and is not subject to the laws of this state relating to insurance and insurance companies except as specifically provided in this chapter. The company has all the powers, privileges, and immunities granted by and is subject to all the obligations imposed upon a mutual insurance company under ~~chapter~~ chapters 26.1-12 and chapters 10-24 through 10-28 10-33. If a provision of chapter 26.1-12 or a ~~provision of chapters 10-24 through 10-28~~ 10-33 and provision of this chapter are both by their terms applicable, the provision of this chapter controls.

SECTION 7. AMENDMENT. Section 26.1-17-11 of the North Dakota Century Code is amended and reenacted as follows:

26.1-17-11. Applicability of portion of Nonprofit Corporation Act. Unless in conflict with this chapter, ~~chapters 10-24, 10-25, 10-26, and 10-28~~ apply chapter

³ Section 14-03-09 was also amended by section 1 of Senate Bill No. 2359, chapter 146.

10-33 applies to the incorporation, operation, and control of any nonprofit health service corporation.

SECTION 8. AMENDMENT. Subsection 2 of section 40-01-23 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The organization or organizations authorized hereunder must be organized pursuant to ~~chapters 40-24 through 40-28~~ chapter 10-33.

SECTION 9. AMENDMENT. Subsection 12 of section 49-23-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12. "Nonprofit corporation" means a corporation established under ~~chapters 40-24 through 40-28~~ chapter 10-33.

SECTION 10. AMENDMENT. Subsection 8 of section 54-01.1-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. "Nonprofit organization" means a corporation organized under ~~the North Dakota Nonprofit Corporation Act, chapters 40-24 through 40-28~~ chapter 10-33, or an organization defined in subsection 7, 8, 9, 10, or 11 of section 57-02-08.

SECTION 11. AMENDMENT. Section 55-03-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-03-01. Permit required to investigate, evaluate, or mitigate adverse effect on cultural resources, historic buildings, structures, or objects - Application - Fee. Any individual, organization, institution, or company engaged on one's own behalf or on behalf of another in identifying, evaluating, or mitigating adverse effects on cultural resources, historic buildings, structures, or objects on any lands in North Dakota, under section 106 of the National Historic Preservation Act of 1966 [Pub. L. 89-665; 80 Stat. 915; 16 U.S.C. 470, as amended by Pub. L. 91-243, Pub. L. 93-54, Pub. L. 94-422, and Pub. L. 94-458], 36 CFR 800, or subdivision u of subsection 1 of section 38-14.1-14 must obtain an annual permit from the superintendent of the state historical board of North Dakota. The permit application must be in the form prescribed by the superintendent. Each application must be accompanied by a filing fee of one hundred dollars. The superintendent may waive the fee requirement if the applicant is an instrumentality of the state of North Dakota. Following issuance of the annual permit, the permittee shall submit to the state historical society of North Dakota payment in the amount of fifty dollars with every cultural resources identification, evaluation, and mitigation report submitted to the superintendent in compliance with the federal and state statutory and regulatory requirements identified in this section. A permittee submitting a report on behalf of a nonprofit corporation formed under ~~chapters 40-24 through 40-28~~ chapter 10-33 does not have to pay the fee for filing the report.

SECTION 12. AMENDMENT. Subsection 2 of section 61-16.1-60 of the North Dakota Century Code is amended and reenacted as follows:

2. The association or associations authorized hereunder shall be organized pursuant to ~~chapters 40-24 through 40-28~~ chapter 10-33.

SECTION 13. AMENDMENT. Section 61-35-29 of the North Dakota Century Code is amended and reenacted as follows:

61-35-29. Authorization to organize association of rural water systems. A district, upon resolution of the district board, may organize and participate in an association of rural water systems organized under ~~chapters 10-24 through 10-28~~ chapter 10-33.

SECTION 14. REPEAL. Chapters 10-24, 10-25, 10-26, 10-27, and 10-28 of the North Dakota Century Code are repealed.

SECTION 15. EFFECTIVE DATE. This Act becomes effective on August 1, 1997.

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 106

HOUSE BILL NO. 1392 (Representatives Maragos, DeKrey) (Senator Krebsbach)

REAL ESTATE INVESTMENT TRUSTS

AN ACT to create and enact a new chapter to title 10 of the North Dakota Century Code, relating to real estate investment trusts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 10 of the North Dakota Century Code is created and enacted as follows:

Definitions. In this chapter, unless the content otherwise requires:

1. "Real estate investment trust" means an unincorporated trust or association formed under this chapter under which property is acquired, held, managed, administered, controlled, invested, or disposed of by trustees for the benefit and profit of any person who may become a shareholder.
2. "Share" means a transferable unit of beneficial interest in a real estate investment trust.

Real estate investment trust authorized. A real estate investment trust is a permitted form of an unincorporated trust or association and may conduct business in this state in accordance with this chapter.

Relationship to other laws.

1. This chapter does not limit any law as that law applies to the creation of or doing business in this state by a common-law trust, business trust, or Massachusetts trust.
2. A provision of this chapter is unenforceable if it makes a real estate investment trust unable to qualify as a real estate investment trust under sections 856 through 858 of the federal Internal Revenue Code or the regulations adopted under those sections.

Compliance with title - Registered office and agent.

1. A real estate investment trust may not do business in this state until it complies with this title.
2. Each real estate investment trust shall maintain in this state:
 - a. A registered office, which need not be the same as the principal place of business or the principal executive office of the real estate investment trust.

- b. An agent for service of process on the real estate investment trust. The agent must be an individual resident of this state, a domestic corporation, a domestic limited liability company, a foreign corporation, or a foreign limited liability company authorized to do business in this state.
 3. A domestic or foreign real estate investment trust shall register with the secretary of state by submitting an application signed by a trustee which includes:
 - a. The name of the real estate investment trust which may not be the same or deceptively similar to the name of any other real estate investment trust registered with the secretary of state, or any corporation, limited liability company, limited partnership, limited liability partnership, or any name that is in some manner reserved with the secretary of state, that is a fictitious trade name registered in the manner provided in chapter 45-11, or that is a trade name registered in the manner provided in chapter 47-25 unless there is filed with the secretary of state a written consent of the holder of the similar trade name to use the name proposed by the real estate investment trust. The name may not contain the word "corporation", "company", "incorporated", "limited liability company", or any abbreviation of these words.
 - b. The state and date of its formation.
 - c. The name, address, and principal place of business of each trustee and officer.
 - d. The address of its registered office and the name of its registered agent located at that office with the written consent of the registered agent attached to the application.
 - e. A statement that the secretary of state is appointed the agent of the real estate investment trust for service of process if the registered agent's authority has been revoked or if the agent cannot be found or served with the exercise of reasonable diligence.
 4. If the secretary of state finds that an application for registration of a real estate investment trust conforms to law and all fees have been paid, the secretary of state shall:
 - a. Endorse on the application the word "filed", and the month, day, and year of the filing.
 - b. File the application in the office of the secretary of state.
 5. A real estate investment trust may change its registered office, change its registered agent, or state a change in the name of its registered agent by filing with the secretary of state, along with the fees provided in this chapter, a statement containing:
 - a. The name of the real estate investment trust.
 - b. If the address of its registered office is to be changed, the new address of its registered office.

- c. If its registered agent is to be changed, the name of its new registered agent.
 - d. If the name of its registered agent is to be changed, the name of its registered agent as changed.
 - e. A statement that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.
 - f. A statement that the change of registered office or registered agent was authorized by resolution approved by the real estate investment trust.
6. A registered agent of a real estate investment trust may resign by filing with the secretary of state a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the real estate investment trust at its principal executive office or to a legal representative of the real estate investment trust. The appointment of the agent terminates thirty days after the notice is filed with the secretary of state.
 7. If the business address or the name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each real estate investment trust represented by that agent by filing with the secretary of state a statement as required in subsection 5, except that it need be signed only by the registered agent, need not be responsive to subdivision f, and must state that a copy of the statement has been mailed to each of those real estate investment trusts or to the legal representative of each of those real estate investment trusts.
 8. The fee prescribed in this chapter for change of registered office must be refunded when in the secretary of state's opinion a change of address of registered office results from rezoning or postal reassignment.
 9. If any statement in the application was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the real estate investment trust shall file promptly with the secretary of state an application for an amended application executed by an authorized person correcting the statement.
 10. The secretary of state may revoke the registration of a domestic or foreign real estate investment trust for failure to maintain a registered office and agent as required by this chapter. Before revoking the registration, the secretary of state shall give not less than sixty days' notice by mail addressed to the registered office and the principal office of record of a foreign real estate investment trust of the deficiency.

Renewal of registration. Any registration of a real estate investment trust filed under this chapter must be renewed every five years from the date of the initial filing. The statement of renewal must be executed by the real estate investment trust on forms prescribed and furnished by the secretary of state and sent to the address of the registered office at least sixty days before the deadline for filing. The statement must include the name of the real estate investment trust, the state or country of

organization, the name and principal place of business of each trustee and officer, the address of the registered office and the name of the registered agent, and a statement that the real estate investment trust is still in existence and continues to transact business in this state. If the secretary of state finds that the statement conforms to the requirements of this section, and the proper filing fee has been paid, the secretary of state shall file the statement. If the secretary of state finds that the statement does not conform, the secretary of state promptly shall return the statement to the real estate investment trust for any necessary corrections, and the certificate of registration must be canceled if the statement is not returned corrected within thirty days after the statement was returned for corrections. If any real estate investment trust fails to file the statement of renewal when due, the secretary of state shall cancel the registration and shall mail notice of cancellation to the address of the registered office. Upon cancellation, the real estate investment trust shall cease to exist.

Service of process on real estate investment trust and nonresident trustees.

1. The registered agent must be an agent of the real estate investment trust and any nonresident trustee upon whom any process, notice, or demand required or permitted by law to be served on the real estate investment trust or trustee may be served. Acceptance of a trusteeship includes the appointment of the secretary of state as an agent for personal service of legal process, notice, or demand.
2. A process, notice, or demand required or permitted by law to be served upon a real estate investment trust may be served either upon the registered agent, or upon a trustee of the real estate investment trust, or upon the secretary of state as provided in this section.
3. If neither the registered agent nor a trustee of the real estate investment trust can be found at the registered office, or if a real estate investment trust fails to maintain a registered agent in this state and a trustee cannot be found at the registered office, then the secretary of state is the agent upon whom the process, notice, or demand may be served. The return of the sheriff, or the affidavit of a person who is not a party, that no registered agent or trustee can be found at the registered office must be provided to the secretary of state. Service on the secretary of state of any process, notice, or demand is deemed personal service upon the real estate investment trust and must be made by filing with the secretary of state an original and two copies of the process, notice, or demand. The secretary of state immediately shall forward, by registered mail, addressed to the real estate investment trust at its registered office, a copy of the process, notice, or demand. Service on the secretary of state is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.
4. A record of all processes, notices, and demands served upon the secretary of state under this section, including the date of service and the action taken with reference to it, must be maintained in the office of the secretary of state.
5. Nothing in this section limits the right to serve any process, notice, or demand required or permitted by law to be served upon a real estate investment trust in any other manner permitted by law.

Powers. A real estate investment trust has the power to:

1. Unless the declaration of trust provides otherwise, have perpetual existence unaffected by any rule against perpetuities.
2. Sue, be sued, complain, and defend in all courts.
3. Transact its business, carry on its operations, and exercise the powers granted by this title in any state, territory, district, or possession of the United States and in any foreign country.
4. Make contracts, incur liabilities, and borrow money.
5. Sell, mortgage, lease, pledge, exchange, convey, transfer, and otherwise dispose of all or any part of its assets.
6. Issue bonds, notes, and other obligations and secure them by mortgage or deed of trust of all or any part of its assets.
7. Acquire by purchase or in any other manner and take, receive, own, hold title in the name of the trust, use, employ, improve, encumber, and otherwise deal with any interest in real and personal property, wherever located.
8. Purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of and deal in and with:
 - a. Securities, shares, and other interests in any obligations of domestic and foreign corporations, other real estate investment trusts, associations, partnerships, and individuals; and
 - b. Direct and indirect obligations of the United States, any other government, state, territory, government district, and municipality, and any instrumentality of them.
9. Elect or appoint trustees, officers, and agents of the trust for the period of time the declaration of trust or bylaws provide, define their duties, and determine their compensation.
10. Adopt and implement employee and officer benefit plans.
11. Make and alter bylaws not inconsistent with law or with its declaration of trust to regulate the government of the real estate investment trust and the administration of its affairs.
12. Exercise these powers, including the power to take, hold, and dispose of the title to property in the name of the trust or in the name of its trustees, without the filing of any bond.
13. Generally exercise the powers set forth in its declaration of trust which are not inconsistent with law and are appropriate to promote and attain the purposes set forth in its declaration of trust.

Restrictions on investments and use - Ownership of farmland prohibited.

1. A real estate trust shall hold at least seventy-five percent of the value of its assets in real estate assets, government securities, cash, and cash items, including receivables.
2. A real estate investment trust, whether domestic or foreign, may not own, use, or apply land within this state for farming or ranching as defined in section 10-06.1-01. A violation of this subsection is deemed a violation of chapter 10-06.1. A real estate investment trust is subject to chapter 10-06.1.

Fees. The secretary of state shall charge and collect the following fees with respect to real estate investment trusts:

1. Filing a registration of a real estate investment trust, one hundred dollars.
2. Filing a registered agent's consent or any amendment changing the registered agent or registered office, ten dollars.
3. Filing a resignation of a registered agent, ten dollars.
4. Filing a renewal or amendment of registration of a real estate investment trust, forty dollars.
5. Issuing a certificate of good standing, twenty-five dollars.

Approved March 13, 1997
Filed March 13, 1997

COUNTIES

CHAPTER 107

HOUSE BILL NO. 1389

(Representatives Belter, Dalrymple)

(Senator G. Nelson)

HOME RULE COUNTY AUTHORITY LIMITATIONS

AN ACT to amend and reenact subsection 2 of section 11-09.1-05 of the North Dakota Century Code, relating to limitations on the authority of a home rule county to supersede certain laws relating to special assessments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 11-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Control its finances and fiscal affairs; appropriate money for its purposes, and make payments of its debts and expenses; subject to the limitations of this section levy and collect property taxes, sales taxes, motor vehicle fuels and special fuels taxes, motor vehicle registration fees, and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements; contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; establish charges for any county or other services to the extent authorized by state law, and establish debt and mill levy limitations; provided, that all property in order to be subject to the assessment provisions of this subsection must be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments. A charter or ordinance or act of a governing body of a home rule county may not supersede any state law which determines what property or acts are subject to, or exempt from, ad valorem or sales and use taxes. A charter or ordinance or act of the governing body of a home rule county may not supersede the provisions of section 11-11-55.1 relating to the sixty percent petition requirement for improvements and of section 40-22-18 relating to the barring proceeding for improvement projects.

Approved March 25, 1997

Filed March 26, 1997

CHAPTER 108

HOUSE BILL NO. 1299 (Representative Kretschmar)

BALLOT ISSUE APPROVAL REQUIREMENT

AN ACT to amend and reenact sections 4-02-27.2, 4-02-31, 11-09.1-06, 11-10.2-02, 11-10.3-01, 15-27.3-19, 15-27.3-21, subsection 2 of section 15-27.6-10, subsection 2 of section 15-28-01, section 15-48-05, subsection 3 of section 21-03-38.1, sections 23-14-01, 23-14-13, 23-14-13.1, 23-29-07, 27-19-02, 38-02-02, 40-02-10, 40-02-11, 40-04-04, 40-04-11, 40-05.1-07, 40-10-02, 40-10-08, 40-33-12, 40-38-01, 40-49-07.2, 40-49.1-02, 40-53.1-04, 40-53.2-03, 54-40.4-01, subsection 1 of section 54-40.4-05, sections 54-40.4-06, 57-15-08, 57-15-12, 57-15-12.1, 57-15-12.3, 57-15-14.5, 57-15-44, 57-15-50, 57-15-51, 57-15-55, 57-15-55.1, subsection 3 of section 57-15-56, subsection 3 of section 57-15-60, sections 61-04.1-29, 61-04.1-30, and 61-04.1-31 of the North Dakota Century Code, relating to the required vote for approval of ballot issues by the qualified electors of political subdivisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-02-27.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-02-27.2. Additional levy in certain counties. The board of county commissioners of any county, when petitioned by at least five percent of the qualified electors of the county, including qualified electors residing in at least one-half of the voting precincts of the county as determined by the number of votes cast in the county for the office of governor at the preceding general election, shall submit to the qualified electors of the county at any general election or special election called for such purpose, the proposition of authorizing the board of county commissioners to purchase or lease in the name of the county not to exceed two hundred forty acres [97.12 hectares] of real estate and to construct thereon such buildings and other improvements as may be deemed desirable for the conduct of a county fair and authorizing the board of county commissioners, if the county general fund is deemed insufficient to provide funds therefor, to levy a tax not exceeding the limitation in subsection 2 of section 57-15-06.7. If a majority of the votes cast by qualified electors on the question at the election are in favor of the proposition, including the proposed levy, the tax must be levied and collected as are other property taxes, with the proceeds to be placed into a fund to be known as the "county fair fund". The tax is in addition to any mill levy limitations provided by law, including the levies authorized by sections 4-02-27 and 4-02-27.1.

SECTION 2. AMENDMENT. Section 4-02-31 of the North Dakota Century Code is amended and reenacted as follows:

4-02-31. Purchase or lease of land - Election required. The board of county commissioners in any county in the state may submit, or when petitioned by at least five percent of the qualified electors of the county in at least one-half of the voting precincts, based upon the votes cast in the county for secretary of state at the last general election, shall submit, to the qualified electors of the county at any general election the proposition of purchasing or leasing not more than eighty acres [32.37 hectares] of land in the name of the county to be used for county fair purposes. If a

majority of the qualified electors voting on the question at the election vote in favor of purchasing or leasing land for such purposes, the board of county commissioners shall purchase or lease, in conformity with this chapter, a tract of land not to exceed eighty acres [32.37 hectares], in the name of the county. The board of county commissioners shall construct such buildings and improvements on the land as it shall deem necessary for the operation and management of the fair. The election on the purchase or lease of land must be conducted and the votes counted as at other elections.

SECTION 3. AMENDMENT. Section 11-09.1-06 of the North Dakota Century Code is amended and reenacted as follows:

11-09.1-06. Amendment or repeal. The home rule charter adopted by any county may be amended or repealed by a proposal by the governing body of the county or by petition of the number of electors provided in section 11-09.1-01, submitted to and ratified by the qualified electors of the county. A petition to amend or repeal a home rule charter must be submitted to the governing body of the county. Within thirty days of receipt of a valid petition or approval of a proposal to amend or repeal a home rule charter, the governing body of the county shall publish any proposed amendment or repeal of a home rule charter once in the official newspaper of the county. At least sixty days after publication, the proposed amendment or repeal must be submitted to a vote of the qualified electors of the county at the next primary or general election. The electors may accept or reject any amendment or a repeal by a majority vote of qualified electors voting on the question at the election.

SECTION 4. AMENDMENT. Section 11-10.2-02 of the North Dakota Century Code is amended and reenacted as follows:

11-10.2-02. Methods of accomplishing office combination, separation, or redesignation of elective or appointive status. The combination or separation of elective county offices, or redesignation of a county office as elective or appointive, may be accomplished:

1. By resolution of the board of county commissioners, subject to the right of referendum in the county electors. The board of county commissioners may by a majority vote adopt a preliminary resolution incorporating a proposed plan for combining or separating county offices, or redesignating a county office as elective or appointive. The board shall cause the complete text of the proposed plan to be published in the official newspaper of the county, at least once during two different weeks within the thirty-day period immediately following the adoption of the preliminary resolution. The board of county commissioners shall hold public hearings and community forums or use other suitable means to disseminate information, receive suggestions and comments, and encourage public discussion of the purpose, conclusions, and recommendations of the plan. Within two years after the adoption of the preliminary resolution, the board of county commissioners may by final resolution approve the plan or amend the plan and approve it for implementation according to its terms. The final resolution may be referred to the qualified electors of the county by a petition protesting the plan. The petition must be signed by ten percent or more of the total number of qualified electors of the county voting for governor at the most recent gubernatorial election, and filed with the county auditor, or functional equivalent of that office, before four p.m. on the thirtieth day after the final resolution is adopted. Within ten days after the filing of

the petition, the county auditor shall examine the petition and ascertain from the voter list whether the petition contains the signatures of a sufficient number of qualified electors. Any insufficiencies may be cured by the filing of an amended petition within ten days after the county auditor declares the insufficiency. The final resolution is suspended upon a determination by the county auditor that the petition was timely filed and contains the signatures of a sufficient number of qualified electors. The board of county commissioners shall reconsider the referred resolution, and if it does not repeal the resolution in its entirety, shall submit the resolution to a vote of the qualified electors of the county at the next regular election. The county auditor shall cause the complete text of the resolution to be published in the official newspaper of the county, not less than two weeks nor more than thirty days, before the date of the election. If a majority of the qualified electors voting on the question approves the resolution, the plan incorporated in the resolution is effective and becomes operative according to its terms as if it had not been suspended.

2. By initiative of county electors. A petition signed by ten percent or more of the total number of qualified electors of the county voting for governor at the most recent gubernatorial election may be submitted to the board of county commissioners, calling upon the board to submit to the electors the question of adopting a plan described in, or annexed to, the petition. The county auditor, or the functional equivalent of that officer, shall examine the petition and ascertain from the voter list whether or not the petition contains the signatures of a sufficient number of qualified electors. Any insufficiencies may be cured by the filing of an amended petition within thirty days after the county auditor declares the insufficiency. When a plan for the combination or separation of county offices or redesignation of county offices as elective or appointive is proposed pursuant to this subsection, the board of county commissioners shall submit the proposed plan to a vote of the qualified electors of the county at a primary or general election not less than sixty days nor more than two years, as specified in the petition, after determining that the petition is sufficient. The question on the ballot at the election must be framed in a manner that fairly and accurately describes the substance of the proposed plan. The board shall cause the complete text of the proposed plan to be published in the official newspaper of the county, at least once during two different weeks within the thirty-day period immediately preceding the date of the election. The board of county commissioners may, prior to the election, hold public hearings and community forums and use other suitable means to disseminate information, receive suggestions and comments, and encourage public discussion of the purpose, conclusions, and recommendations of the plan. If a majority of the qualified electors voting on the ~~proposed plan~~ approves the question approves of its adoption, the plan is effective according to its terms.

SECTION 5. AMENDMENT. Section 11-10.3-01 of the North Dakota Century Code is amended and reenacted as follows:

11-10.3-01. Multicounty combination of elective officers.

1. A county may combine any county elective office with one or more elective offices of one or more other counties for the purpose of sharing that combined office for the performance of functions and the provision

of services among those counties. The procedures set forth in this chapter apply to the combination, unless a specific procedure for combining particular elective county offices is otherwise provided by law.

2. A proposal for combining county elective offices may be accomplished:
 - a. By the boards of county commissioners of each affected county by entering into a joint powers agreement incorporating a plan for the office combination, subject to the right of referendum in the electors of each of the counties; or
 - b. By initiative of the electors of each affected county. A petition signed by ten percent or more of the total number of qualified electors of each county voting for governor at the most recent gubernatorial election may be submitted to the boards of county commissioners of each county, calling upon the boards to submit to the electors the question of adopting a plan described in, or annexed to, the petition.
3. A joint powers agreement entered into between counties for combining the functions of any county elective office pursuant to subdivision a of subsection 2 may be referred to the qualified electors of an affected county by a petition protesting the agreement. The petition must be signed by ten percent or more of the total number of qualified electors of the county voting for governor at the most recent gubernatorial election, and filed with the county auditor, or functional equivalent of that office, before four p.m. on the thirtieth day after the agreement is adopted. Within ten days after the filing of the petition, the county auditor shall examine the petition and ascertain from the voter list whether the petition contains the signatures of a sufficient number of qualified electors. Any insufficiencies may be cured by the filing of an amended petition within ten days after the county auditor declares the insufficiency. The implementation of the terms of the joint powers agreement is suspended upon a determination by the county auditor that the petition was timely filed and contains the signatures of a sufficient number of qualified electors. The board of county commissioners shall reconsider the referred agreement and, if the board does not terminate the agreement in its entirety, shall submit the question to a vote of the qualified electors of the county at the next regular election. The county auditor shall cause the complete text of the agreement to be published in the official newspaper of the county, not less than two weeks nor more than thirty days, before the date of the election. The boards of county commissioners may, prior to the election, hold public hearings and community forums and use other suitable means to disseminate information, receive suggestions and comments, and encourage public discussion of the purpose and provisions of the plan. If a majority of the qualified electors voting on the question in the county approve the question, the plan incorporated in the agreement is effective and becomes operative according to the terms of the agreement as if the agreement had not been suspended. If the electors of either county ~~disapprove~~ do not approve the question, the plan does not become effective.
4. The question of combination of the functions of elective county offices brought by petition pursuant to subdivision b of subsection 2 must be submitted by the boards of county commissioners to the electors in each

of the affected counties at a primary or general election not less than sixty days nor more than two years, as specified in the petition, after the petition is determined sufficient by each board. The question on the ballot at the election must be framed in a manner that fairly and accurately describes the substance of the proposed office-sharing arrangement. The board of county commissioners in each affected county shall cause the complete text of the proposed plan for combining offices to be published in the official newspaper of the county, at least once during two different weeks within the thirty-day period immediately preceding the date of the election. The boards of county commissioners may, prior to the election, hold public hearings and community forums and use other suitable means to disseminate information, receive suggestions and comments, and encourage public discussion of the purpose and provisions of the plan. If a majority of the qualified electors of each county voting on the ~~proposed plan~~ approves the question approves of its adoption, the plan is effective according to its terms.

5. One copy of the plan as approved must be filed with the district court for each county and one with each county auditor or functional equivalent to remain as a part of each county's permanent records. The boards of county commissioners may take any action necessary to bring about an orderly transition in implementation of the plan.
6. A plan, or part of a plan, adopted pursuant to this chapter may be revised or terminated through another joint powers agreement or petition submitted pursuant to the procedure set forth in this chapter for adopting a plan, or pursuant to provisions for termination or revision provided in the original joint powers agreement.

SECTION 6. AMENDMENT. Section 15-27.3-19 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-27.3-19. Changes in reorganization proposal. At any time after the reorganization proposal has become effective, any provision of the reorganization proposal, including provisions affecting the adjustment of assets and liabilities but excepting provisions defining the boundaries of the district, may be changed by a majority vote of the qualified electors voting on the question without approval of the state board or the county committee. The school board in the reorganized district may, upon its own motion, or shall, upon the filing with it of a petition signed by qualified electors equal in number to twenty percent or more of the persons enumerated in the most recent school district census, unless the census is greater than four thousand, in which case only fifteen percent or more of the number of persons enumerated in the school census is required, submit the question of authorizing a change in the school district's adopted reorganization proposal at the next regular or special election. However, not fewer than twenty-five signatures of qualified electors is required unless the district has fewer than twenty-five qualified electors, in which case the petition must be signed by not less than twenty-five percent of the qualified electors of the district. In districts with fewer than twenty-five qualified electors, the county superintendent for the county in which the school is located shall determine the number of qualified electors in the district. If a majority of all votes cast on the question by the electors residing in the district is in favor of the proposed change, then the proposed change is effected. If a reorganization plan has been in effect for at least ten years, any proposed change to geographic voting areas is effective upon a majority vote in an election at large by the qualified electors of the district voting on the question. A school board in a

reorganized school district may change, by resolution, to at large voting for school board candidates if there is a variance of more than ten percent in the population between any of the district's established geographic areas with resident candidates.

SECTION 7. AMENDMENT. Section 15-27.3-21 of the North Dakota Century Code is amended and reenacted as follows:

15-27.3-21. Proportionate tax rate on agricultural property. Any school district which imposed a proportionate tax rate for school purposes levied on agricultural property different from the school district levy on other taxable property as permitted by sections 15-53.1-37 and 15-53.1-38, as they existed on December 31, 1984, must continue to levy that proportionate tax rate unless it is discontinued by the school board upon a majority of the ~~voters~~ qualified electors of the school district voting on the question. No other school district may impose such a proportionate tax rate for different classes of property within the school district.

SECTION 8. AMENDMENT. Subsection 2 of section 15-27.6-10 of the North Dakota Century Code is amended and reenacted as follows:

2. If a majority of qualified electors residing within each school district and voting on the question vote in favor of the formation of the new district, the county superintendent shall make the proper adjustments and perform all necessary duties as provided in subsection 5 of section 15-27.3-08.

SECTION 9. AMENDMENT. Subsection 2 of section 15-28-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The number of school board members in any public school district may be increased to either five, seven, or nine or decreased to seven or five if a petition signed by at least one-third of the qualified electors of the school district as determined by the number of persons voting at the most recent annual school district election is filed with the school board asking for such change, and the change is approved by a majority of the qualified electors of the district voting on the question at a special election called for that purpose. If approved, the additional members must be elected to the board at the next annual school district election in the same manner as other school board members. If the total number of board members after the increase is approved is five, two shall serve until the first annual election, two until the second annual election, and one until the third annual election thereafter. If the total number of board members after the increase is approved is seven, three shall serve until the first annual election, two until the second annual election, and two until the third annual election thereafter. If the total number of board members after the increase is approved is nine, three shall serve until the first annual election, three until the second annual election, and three until the third annual election thereafter. All such members shall serve for the terms prescribed ~~above~~ in this section and until their successors are elected and qualified, and the length of the respective terms of those members elected as a result of the increase in membership of the board shall be determined by lot. The length of any term which existed prior to the increase in membership and which is held by a member who has duly qualified, may not be modified by such determination. Terms subsequent to the first must be for the normal term of three years, and until a successor is elected and qualified.

School board members must be elected at large, except that if the district in which they are elected has been reorganized, such members may be elected either at large or by geographical area. In reorganized districts, in which an increase in the membership of the board is proposed, the election on the reorganization proposal takes the place of the petition and election requirements of this subsection, and approval of the reorganization proposal has the same effect as if the approval were by the election provided for in this subsection. Should a decrease to not fewer than five members be approved by the qualified electors voting on the question, the excess number of members will serve out existing terms until the number approved by the qualified electors has been reached.

SECTION 10. AMENDMENT. Section 15-48-05 of the North Dakota Century Code is amended and reenacted as follows:

15-48-05. Record of proceedings - Certificate filed with county auditor. A record of the proceedings connected with the submission of the question of increasing the debt limit, the result of the election, and the number of votes cast for and against the proposition, respectively, must be made and preserved in the records of the school district. If a majority of votes cast on the question are in favor of increasing the debt limit, a certificate, signed by the president of the school board and attested by the business manager of the school district, reciting the result of the election and the fact that the limit of indebtedness of said school district has been increased to ten percent of the assessed valuation of the taxable property of said district, and stating the number of votes cast for and against such increase, respectively, must be filed with the county auditor of the county in which said school district is situated, where the said certificates must be preserved and kept on file.

SECTION 11. AMENDMENT. Subsection 3 of section 21-03-38.1 of the North Dakota Century Code is amended and reenacted as follows:

3. The governing body, upon approval by a majority vote of the qualified electors, voting on the question at an election called therefor, may use the funds for some other purpose authorized by law.

SECTION 12. AMENDMENT. Section 23-14-01 of the North Dakota Century Code is amended and reenacted as follows:

23-14-01. Formation of health districts. When in the opinion of the state health officer, on information obtained in cooperation with local health officers and local boards of health, the health needs of any given area may be better served by the formation of a health district, as hereinafter provided, the state health officer shall so notify the county auditor of each county involved and the city auditor of each city having a population in excess of fifteen thousand persons. Each county auditor and city auditor shall place the matter before the governing board of the county or city at its next regular meeting, and the governing board by resolution either shall adopt or reject the plan at the same or the first subsequent meeting. If resolutions are adopted by the governing boards of the cities and counties as hereinbefore provided, adopting the health district plan, all laws and parts of laws in conflict therewith automatically become inoperative throughout the territory embraced within the district, and particularly the laws relative to city, township, and county boards of health. If the board of county commissioners of any county or the city council or city commission of any city, rejects the plan, it may submit the question of adoption of the provisions of this chapter to the qualified electors of the county or city at the next ensuing general or special election to be held in said county or city. In all elections held under this chapter, the votes cast in the cities

having a population in excess of fifteen thousand inhabitants must be considered separate and apart from the votes cast elsewhere in the county, and the participation in the health district by any city must be governed by the votes cast in the city as distinguished from the vote cast elsewhere in the county. If a majority of the qualified electors voting on the question vote in favor of the adoption of the provisions of this chapter, the board of county commissioners, within ten days after the canvass of said election, shall adopt such resolution, and, upon the adoption of such resolution such county or counties, together with the cities voting in favor of the plan, must be considered a district health unit or health district. On a petition filed with the county auditor containing names of qualified electors of the county equal to ten percent or more of the votes cast for the office of governor at the last general election, an election on the question of forming a health district must be held as heretofore provided. The health districts must follow county lines, and in case the district as outlined by the state health officer includes more than one county, and the plan is adopted in any of said counties or cities, and rejected in any one or more of the other counties or cities, it becomes effective in the county or counties and city or cities adopting the plan, if ~~in the exercise of his discretion~~ the state health officer deems the same operative.

SECTION 13. AMENDMENT. Section 23-14-13 of the North Dakota Century Code is amended and reenacted as follows:

23-14-13. Dissolution. After a district health unit organized as provided in this chapter has been in operation for two years, the same may be dissolved in the following manner: On a petition filed with the county auditor of each county of a health district containing names of qualified electors of the county equal to ten percent or more of the votes cast for governor at the last general election in each county, an election on the question of dissolution must be presented to the qualified electors in each county in the district at the next general or special election held in each county in the district. If a majority of the votes cast on the question in a majority of the counties favor dissolution, the health unit must be dissolved on January first following the election. If a majority of the votes cast on the question in a majority of the counties are against dissolution, no other election may be held until a period of two years has again expired.

SECTION 14. AMENDMENT. Section 23-14-13.1 of the North Dakota Century Code is amended and reenacted as follows:

23-14-13.1. Withdrawal. After a district health unit organized as provided in this chapter has been in operation for two years, any county may withdraw from the district in the following manner: On a petition filed with the county auditor containing names of qualified electors of the county equal to ten percent or more of the votes cast for governor at the last general election in that county, an election on the question of withdrawal must be presented to the qualified electors in the county at the next general or special election held in the county. If a majority of the votes cast on the question favor withdrawing from the district, the county will be considered withdrawn from the unit on January first following the election. If a majority of the votes cast on the question are against withdrawal, no other election may be held until a period of two years has again expired.

SECTION 15. AMENDMENT. Section 23-29-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-29-07. Permits.

1. The department may issue permits for solid waste management facilities and solid waste transporters. It is unlawful for any person to own, operate, or use a facility for solid waste disposal or transport solid wastes without a valid permit. Upon receipt of a permit application, the department shall give public notice, in the official newspaper of the county in which the facility is to be located, that the department is considering an application for a solid waste management facility. The notice must state the name of the applicant, the location of the facility, and a description of the facility. The department shall require as a condition of a permit for a solid waste management facility, not owned or operated by the state or a political subdivision, that any entity that controls the permitholder agrees to accept responsibility for any remedial measures, closure and postclosure care, or penalties incurred by the permitholder. For purposes of this section, "control" means ownership or control, directly, indirectly, or through the actions of one or more persons of the power to vote twenty-five percent or more of any class of voting shares of a permitholder, or the direct or indirect power to control in any manner the election of a majority of the directors of a permitholder, or to direct the management or policies of a permitholder, whether by individuals, corporations, partnerships, trusts, or other entities or organizations of any type. All permits are nontransferable, are for a term of not more than ten years from the date of issuance, and are conditioned upon the observance of the laws of the state and the rules adopted under this chapter.
2. For any permit application completed after July 1, 1994, the department shall notify the board of county commissioners of a county in which a new solid waste management facility will be located of the department's intention to issue a permit for the facility. The board of county commissioners may call a special election to be held within sixty days after receiving notice from the department to allow the qualified electors of the county to vote to approve or disapprove of the facility based on public interest and impact on the environment. If a majority of the qualified electors voting on the question in the election vote to disapprove of the facility, the department may not issue the permit and the facility may not be located in that county.
3. Notwithstanding subsection 2, if the new solid waste management facility for which the permit application was completed after July 1, 1994, will be owned or operated by a solid waste management authority, a special election to approve or disapprove of a facility may be called only if the boards of county commissioners from a majority of the counties in the solid waste management district call for a special election. However, a special election must be conducted in each county within the authority. If a majority of the qualified electors voting on the question in the election vote to disapprove of the facility, the department may not issue the permit.
4. Subsections 2 and 3 do not apply to a solid waste management facility operated as part of an energy conversion facility or part of a surface coal mining and reclamation operation, if the solid waste management facility disposes of only waste generated by the energy conversion facility or surface coal mining and reclamation operation.

SECTION 16. AMENDMENT. Section 27-19-02 of the North Dakota Century Code is amended and reenacted as follows:

27-19-02. Method of acceptance. Acceptance of jurisdiction may be by either of the following methods:

1. Upon petition of a majority of the enrolled residents of a reservation who are eighteen years of age or older; or
2. The affirmative vote of the majority of the enrolled residents voting on the question who are eighteen years of age or older, at an election called and supervised by the North Dakota Indian affairs commission upon petition of fifteen percent or more of those eligible to vote at such an election.

SECTION 17. AMENDMENT. Section 38-02-02 of the North Dakota Century Code is amended and reenacted as follows:

38-02-02. Width of lode claims - Extension - Reduction. The width of lode claims is one hundred fifty feet [45.72 meters] on each side of the center of the vein or crevice, except that any county, at any general election by a majority of the votes cast on the question at such election, may determine upon a greater width not exceeding three hundred feet [91.44 meters] on each side of the center of the vein or lode. By a like vote, any county may determine upon a width less than that specified in this section, except that a width of less than twenty-five feet [7.62 meters] on each side of the vein or lode is prohibited.

SECTION 18. AMENDMENT. Section 40-02-10 of the North Dakota Century Code is amended and reenacted as follows:

40-02-10. Election returns - To whom made - Duty of board of county commissioners. The election officials acting in each place in which votes are cast in an election held under this chapter shall return to the board of county commissioners which ordered the election a verified statement of the results of the election showing the number of votes cast for and against incorporation at their voting place. The returns shall be verified by the affidavit of the election officials. The returns shall be canvassed by the board of county commissioners, and the results of the canvass and of the election shall be entered upon the minutes of the proceedings of such board. If a majority of the votes cast on the question at the election favored incorporation, the board shall make an order declaring that the territory described in the petition has been incorporated as a city under the council form of government or as a city under the commission system of government, as the case may be, by the name described in the petition, stating that name, and shall cause the order to be entered in the minutes of its proceedings. If the territory is located in more than one county, a certified copy of such order shall be submitted immediately to each of the other counties within which a portion of the territory described in the order is situated. The auditor of each county to which a certified copy of the order is submitted shall make a record thereof in the minutes of the board of county commissioners of such county.

SECTION 19. AMENDMENT. Section 40-02-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-02-11. Division into wards. If a majority of the votes cast on the question at the election provided for in this chapter favored incorporation as a city, the board of county commissioners that ordered the election shall, if the territory has been incorporated as a city under the council form of government, divide the city into wards. The city may not be divided into wards unless it has more than six hundred inhabitants. If the city has more than six hundred inhabitants, one ward must be

formed for each two council members to which the city is entitled. In cities of more than fifteen thousand inhabitants, however, the number of wards is limited to seven originally, and that number may be increased thereafter as provided in this title. Each ward must be formed from contiguous territory, and all wards must be numbered consecutively and must have, as nearly as practicable, the same number of inhabitants. After the election of council members, the governing body of the city shall form or establish wards pursuant to law.

SECTION 20. AMENDMENT. Section 40-04-04 of the North Dakota Century Code is amended and reenacted as follows:

40-04-04. Returns and canvass of election - Certificate to secretary of state - Officers to continue until election. The officials of an election held under the provisions of this chapter shall make a return of such election to the governing body of the city and such governing body shall canvass such returns and cause the result of the canvass to be entered upon the records of the city. If a majority of the votes cast on the question at such election shall be for city organization under the commission system, the auditor shall certify the adoption of such form of government and a copy of the proceedings concerning the same to the secretary of state together with the result of any special census taken in such city. The city officers then in office shall exercise the powers conferred upon like officers of a city operating under the commission system of government until their successors are elected and qualified.

SECTION 21. AMENDMENT. Section 40-04-11 of the North Dakota Century Code is amended and reenacted as follows:

40-04-11. Procedure when election favors changing from commission system of government. If a majority of the votes cast on the question at the election provided for in section 40-04-10 favor the proposition submitted at such election, the officers elected at the next biennial election shall be those prescribed by the provisions of this title relating to cities organized under the city council form of government. Upon the qualification of such officers, the city shall become a city under the council form of government.

SECTION 22. AMENDMENT. Section 40-05.1-07 of the North Dakota Century Code is amended and reenacted as follows:

40-05.1-07. Amendment or repeal. The home rule charter adopted by any city may be amended or repealed by proposals submitted to and ratified by the qualified electors of the city in the same general manner provided in section 40-05.1-02 and section 40-05.1-04 for the adoption of such charter. Amendments may be proposed by the governing body of the city or by petition of the number of electors provided in section 40-05.1-02 and submitted to the voters at the same election. The voters may at their option accept or reject any or all of such amendments by a majority vote of qualified electors voting on the question at the election. A proposal to repeal a home rule charter that has been adopted shall likewise be submitted to the electors of the city as set forth in this section.

SECTION 23. AMENDMENT. Section 40-10-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-10-02. Vote required to adopt plan - Effective date. If a majority of the votes cast on the question at the election favors the adoption of the city manager plan, the governing body shall declare the plan adopted, and shall fix the date when

the plan becomes effective. The date must be after the first regular meeting of the governing body in the month of July following the election.

SECTION 24. AMENDMENT. Section 40-10-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-10-08. Election to determine question of retention of city manager plan - Procedure thereafter. At any time after the city manager plan has been in force in any city for a period of five years or more, the governing body of the city may submit at any regular election the question of whether or not such plan shall be retained. If a petition signed by forty percent or more of the qualified electors of the city as shown by the votes cast for the executive officer at the preceding city election, requesting the submission of such question is filed with the city auditor, the governing body shall submit such proposal to the qualified electors of the city at an election to be held within ninety days after the filing of such petition. The signatures to such petition need not be appended to a single paper, but each single paper so used shall clearly state the purpose of the petition at the top of the paper, and each signature shall have been placed thereon not more than ninety days prior to the date on which the petition is filed in the office of the city auditor. Upon each paper one of the qualified electors signing such petition shall, under oath before an officer competent to administer oaths, swear that ~~he~~ that person witnessed the signing of each signature appearing on such paper and that each signature appearing upon such paper is the genuine signature of the person whose name it purports to be. Each petition, in addition to the names of the signers, shall contain the name of the street and the number of the house in which each petitioner resides, the length of ~~his~~ the petitioner's residence in the state of North Dakota; ~~the length of his residence~~ and in the city, and the date on which the petitioner signed the petition. Any petitioner shall be permitted to withdraw ~~his~~ the petitioner's name from a petition at any time prior to action by the governing body calling the election as provided herein. Such question shall not be submitted more than once in every five years. If a majority of the votes cast on the question at the election shall be against retaining the city manager plan, the city shall revert to the plan in force previous to the adoption of the city manager plan, and the provisions of this chapter shall not be applicable to such city except after another compliance with its terms. The governing body shall fix the date, not less than three months nor more than six months after an election at which the majority vote on the question is against the retention of the city manager plan, when such plan shall cease to be operative in the municipality.

SECTION 25. AMENDMENT. Section 40-33-12 of the North Dakota Century Code is amended and reenacted as follows:

40-33-12. Surplus in municipal utilities fund - How expended. When the governing body of the municipality ~~shall determine~~ determines that there is a cash surplus in the municipal utilities fund over and above any amount necessary to provide adequately for the operation, maintenance, repair, enlargement, alteration, improvement, and extension of the plant or plants, it; ~~in its discretion,~~ may invest the surplus or transfer it or a portion thereof as follows:

1. All or any part of the surplus may be invested by the governing body in interest-bearing bonds of the United States government, the state of North Dakota, or any bonds or special improvement district warrants of the municipality in which the municipal plant is located, and all the principal and interest on the warrants and bonds, when repaid, shall be placed back in the municipal utilities fund; or

2. The governing body may transfer from the surplus in the fund to the general fund of the municipality or to any other fund of the municipality a total sum of not more than twenty percent of the gross receipts of the municipal utilities for the fiscal year of the municipality during which the transfer or transfers are made. In addition the governing body, upon adoption of a resolution declaring it necessary and upon approval of a majority of the votes cast on the question at a regular city election, may transfer to the general fund of the municipality or to any other fund of the municipality from the surplus in the municipal utilities fund at the end of any fiscal year. The resolution and ballot shall state the specific amount or percentage to be transferred as hereinbefore provided.

SECTION 26. AMENDMENT. Section 40-38-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-38-01. Public library and reading room - Establishment - Election. The governing body of any city or county upon petition of not less than fifty-one percent of the qualified electors of the city or county as determined by the total number of votes cast at the last general election or upon a majority vote of the qualified electors thereof voting on the question shall establish and maintain public library service within its geographic limits by means of a public library and reading room or other public library service, either singly or in cooperation with the state library, or with one or more cities or counties, or by participation in an approved state plan for rendering public library service under the Library Services and Construction Act [20 U.S.C. 351-358], and acts amendatory thereof. Such question shall be submitted to the qualified electors upon resolution of the governing body or upon the petition of not less than twenty-five percent of that number of qualified electors of the city or county that voted at the last general election, filed with the governing body not less than sixty days before the next regular election. Library service may be discontinued within any city or county by any of the methods by which library services may be established, except that once established, such service shall not be discontinued until after it has been in operation for at least five years from the date of establishment.

SECTION 27. AMENDMENT. Section 40-49-07.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-49-07.2. Dissolution of city park district - Election.

1. A city park district may be dissolved pursuant to a plan adopted pursuant to this section. A proposal for dissolving a city park district may be initiated:
 - a. By resolution incorporating a dissolution plan, approved by a majority vote of the board of park commissioners and submitted to the governing body of the city; or
 - b. By a petition incorporating a dissolution plan, signed by twenty-five percent or more of the total number of qualified electors of the city park district voting at the last regular city election and submitted to the governing body of the city.
2. The governing body of the city shall submit the question of dissolution to the electors of the park district at any regular city election or primary or general election as specified in the resolution or petition submitted pursuant to subsection 1. The plan incorporated in the resolution or petition is effective and becomes operative according to its terms if a

majority of the qualified electors voting on the question approves the plan.

3. A plan for dissolving a city park district may specify:
 - a. The disposition and maintenance of land and other property acquired by the board of park commissioners of the dissolved park district;
 - b. The manner for payment of any current indebtedness, evidences of indebtedness in anticipation of user fee revenues, bonded indebtedness, and other obligations of the dissolved park district;
 - c. The disposition of any outstanding special assessments or other anticipated revenues;
 - d. The transition in implementing the plan, including elements that consider the reasonable expectations of current officeholders and personnel such as delayed effective dates for implementation; and
 - e. Other considerations and provisions that are consistent with state law.
4. The governing body of the city shall cause the complete text, or a fair and accurate summary, of the plan to be published in the official newspaper of the city, not less than two weeks nor more than thirty days, before the date of the election. The governing body may, prior to the election, hold public hearings and community forums and use other suitable means to disseminate information, receive suggestions and comments, and encourage public discussion of the purpose and provisions of the plan.

SECTION 28. AMENDMENT. Section 40-49.1-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-49.1-02. Election on combination plan. If a plan for combining boards of park commissioners is proposed by agreement or petition, the participating or affected boards shall immediately submit the proposed plan to the governing bodies of the affected cities and, if applicable, to the board of county commissioners of any affected county. Those boards shall jointly submit the question of combination to the qualified electors of the affected cities and counties at a primary or general election as specified in the agreement or petition within two years of the initial submission of the agreement or petition, and shall cause the complete text, or a fair and accurate summary, of the plan to be published in the official newspapers of the affected cities and counties, not less than two weeks nor more than thirty days, before the date of the election. The boards of park commissioners may, prior to the election, hold public hearings and community forums and use other suitable means to disseminate information, receive suggestions and comments, and encourage public discussion of the purpose and provisions of the plan. The plan incorporated in the agreement or petition is effective and becomes operative according to its terms if a majority of the qualified electors voting on the question in each affected city or county approves the plan.

SECTION 29. AMENDMENT. Section 40-53.1-04 of the North Dakota Century Code is amended and reenacted as follows:

40-53.1-04. Dissolution - Vote required - Effect on debts and contracts. If a majority of the votes cast on the question are in favor of dissolution the county commissioners shall, by motion and proclamation, set a date upon which dissolution will become effective and the city shall be dissolved, provided provision has been made for payment of its current indebtedness, contracts, and obligations, and for levying the requisite tax to do so. The current indebtedness, contracts, and obligations do not include funded or bonded indebtedness nor any contract whose termination date is more than one year beyond the date the election was held.

SECTION 30. AMENDMENT. Section 40-53.2-03 of the North Dakota Century Code is amended and reenacted as follows:

40-53.2-03. Municipal consolidation review commission. Upon passage by a simple majority of the votes cast on the question in each of the cities seeking consolidation in the manner provided by section 40-53.2-02, the governing body of each of the cities seeking consolidation shall appoint an equal number of the members of each governing body who shall convene as the municipal consolidation review commission to make a finding as to whether or not there is sufficient reason to further consider consolidation of the cities seeking consolidation. If the commission finds insufficient reason, no further consideration shall be given to the matter of consolidation of the cities. If the commission finds sufficient reason for consolidation, it shall develop a recommended plan of consolidation, holding such hearings on the plan as it deems appropriate. The commission shall submit its recommended plan to the voters of both cities. Upon receiving a majority affirmative vote of the electors of each city, voting on the question at a special election or any regular election, the review commission's recommended plan shall become effective on July first of the next year.

SECTION 31. AMENDMENT. Section 54-40.4-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-40.4-01. County-city home rule - City participation. One or more counties and one or more cities within each county may frame and adopt a home rule charter to form a single unit of local government pursuant to this chapter. A county-city home rule charter may include a city that participates in proposing the charter if a majority of the qualified electors of the city voting on the question approve the proposed charter.

SECTION 32. AMENDMENT. Subsection 1 of section 54-40.4-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. If a majority of the qualified electors of the county and a majority of the qualified electors of at least one city in the county voting on the question approves the charter, it is ratified and becomes the organic law of the area on the first day of January or July next following the election. However, the proposed charter may condition the approval of the charter on separate approval by any number of specified counties or cities participating in the charter process.

SECTION 33. AMENDMENT. Section 54-40.4-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-40.4-06. Amendment or repeal - Discontinuance of participation.

1. A county-city home rule charter may be amended or repealed by a proposal submitted by the governing body of the unified county-city government or by a petition filed with the governing body signed by ten percent or more of the total number of qualified electors within the jurisdiction of the county-city government who voted in the last preceding general election. The governing body may appoint a charter commission to draft amendments to the charter. The proposals must be submitted to a vote of the qualified electors of the unified county-city government at the next primary or general election. The voters may accept or reject any amendment or a repeal by a majority vote of the qualified electors of the unified government voting on the question at the election.
2. A participating county or city may discontinue its participation in the unified county-city government by filing with the governing body a petition proposing the action that is signed by ten percent or more of the total number of qualified electors within the county or city. The proposal must be submitted to a vote of the qualified electors at the next primary or general election. The voters may accept or reject the proposal by a majority vote of the qualified electors of the county or city voting on the question at the election.

SECTION 34. AMENDMENT. Section 57-15-08 of the North Dakota Century Code is amended and reenacted as follows:

57-15-08. Tax levy limitations in cities. The aggregate amount levied for general city purposes may not exceed ~~such~~ an amount ~~as will be~~ produced by a levy of thirty-eight mills on the taxable valuation of property in the city; provided, that in cities with a population of over five thousand they be permitted to levy an additional one-half of one mill for each additional one thousand population in excess of five thousand, and provided, further, that the maximum levy for general city purposes may not exceed forty mills, except that ~~cities~~ a city, when authorized by a majority vote of the electors of ~~such cities~~ the city voting on the question upon the submission of such question at a regularly scheduled or special election called for such purpose pursuant to a resolution approved by the governing body of ~~such cities~~ city, may increase the maximum mill levy for general city purposes by not more than ten mills, and that in a city supporting a band or public library an additional levy, not to exceed one mill on the taxable valuation of property in such city, may be made for a band, and an additional levy not to exceed four mills on the taxable valuation of property in such city may be made for a public library.

SECTION 35. AMENDMENT. Section 57-15-12 of the North Dakota Century Code is amended and reenacted as follows:

57-15-12. Tax levy limitations in park districts. In park districts tax levies have the following limitations:

1. The aggregate amount levied for park district purposes, exclusive of levies to pay interest on bonded debt and levies to pay and discharge the principal thereof, and levies to pay the principal and interest on special assessments assessed and levied against park board properties by other municipalities, may not exceed ~~such an~~ amount ~~as will be~~ produced by a levy of four mills on the dollar of the taxable valuation of the district for the current year.

2. Any park district owning and operating an airport for which no city levy is made, may levy an additional tax, ~~regardless of the foregoing limitations and in addition to the levies hereinbefore provided for~~, of not to exceed four mills on the dollar of the taxable valuation of the district for the current year, such additional tax to be used solely for the purpose of purchasing or acquiring lands necessary for said airport, paying for land previously acquired for said airport, and for operating and maintaining the same.
3. Whenever the board of park commissioners deems it advisable to raise moneys by taxes in excess of the levy herein provided, for any purpose for which the park district is authorized to expend moneys raised by taxes, the board of park commissioners shall submit to the voters of the district the question of increasing the levy by a certain number of mills, but not to exceed fifteen mills, on the dollar of the taxable valuation of the district. When authorized by a majority of the qualified electors of the park district voting on the question at an election in which the question has been submitted, the board may increase the levy in the amount so authorized. This excess levy may be continued from year to year by action of the park board except that if a petition containing the signatures of not less than ten percent of the qualified electors of the park district, as determined by the city auditor of the municipality in which the park district is situated, is presented to the park board requesting an election on the question of continuing the excess levy, that question must be submitted to the qualified electors of the park district at the next regular park district election. If the majority of the qualified electors voting on the question at that election determine not to continue the excess levy, no further excess levy may be made except that the election does not affect the tax levy in the calendar year in which the election is held.

SECTION 36. AMENDMENT. Section 57-15-12.1 of the North Dakota Century Code is amended and reenacted as follows:

57-15-12.1. City or park district tax levy or service charge for forestry purposes.

1. The governing body of a city or park district may annually levy a tax not in excess of two mills on the taxable valuation of property within the city or park district, for the purpose of providing funds for the establishment, operation, and maintenance of forestry activities within the city or park district. The governing board of a city or park district, upon approval by a majority vote of the qualified electors voting on the question at any citywide or districtwide election, may also annually levy an additional tax not in excess of three mills on the taxable valuation of property within the city or park district, for the purpose of providing funds for forestry activities within the city or park district. Any such tax is in addition to and not restricted by any mill levy limit prescribed by law. The proceeds of any such levy may be used for forestry activities, including; ~~but not limited to~~, the following: prevention or control of Dutch elm disease or other diseases which may affect trees, shrubs, and other vegetation; purchasing, planting, or removal of trees, shrubs, and other vegetation; pruning and maintenance of trees, shrubs, and other vegetation; purchasing of necessary equipment; hiring of personnel; contracting for services; public information and technical assistance; and other items related to forestry activities which may be necessary to

provide for proper care, maintenance, propagation, and improvement of forestry resources within the city or park district.

2. In lieu of a mill levy as specified in subsection 1, a city or park district may propose a service charge as an alternative form of financing. Such alternative form of financing must be approved by a majority vote of the qualified electors voting on the question at any general or special citywide or districtwide election. The proceeds of any service charge may be used for forestry activities, as specified in subsection 1.

SECTION 37. AMENDMENT. Section 57-15-12.3 of the North Dakota Century Code is amended and reenacted as follows:

57-15-12.3. Tax levy for parks and recreational facilities. A board of park commissioners established pursuant to chapter 40-49, may levy taxes annually not exceeding the limitation in subsection 5 of section 57-15-12.2 for a fund for the purpose of acquiring real estate as a site for public parks, construction of recreational facilities, renovation and repair of recreational facilities, and the furnishing of recreational facilities. The tax is to be levied, spread, and collected in the same manner as are other taxes in the park district. The question of whether the levy is to be discontinued must be submitted to the qualified electors at the next regular election upon petition of twenty-five percent or more of the qualified electors voting in the last regular park district election, if the petition is filed not less than sixty days before the election. If the majority of the qualified electors voting on the question vote to discontinue the levy, it may not again be levied without a majority vote of the qualified electors voting on the question at a later regular election on the question of relevying the tax, which question may be submitted upon petition as above provided or by decision of the governing board.

¹ **SECTION 38. AMENDMENT.** Section 57-15-14.5 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-15-14.5. Long-distance learning and educational technology levy - Voter approval.

1. The school board of a public school district may, upon approval by a majority vote of the qualified electors of the school district voting on the question at any regular or special election, dedicate a tax levy for purposes of this section not to exceed five mills on the dollar of taxable valuation of property within the district.
2. All revenue accruing from the levy under this section must be used only for purposes of establishing and maintaining long-distance learning and purchasing and maintaining educational technology. For purposes of this section, educational technology includes computer software, computers and computer networks, and other computerized equipment, which must be used for student instruction.

¹ Section 57-15-14.5 was also amended by section 7 of House Bill No. 1146, chapter 175.

3. If the need for the fund terminates, the governing board of the public school district shall order the termination of the levy and shall transfer the remaining balance to the general fund of the school district.

SECTION 39. AMENDMENT. Section 57-15-44 of the North Dakota Century Code is amended and reenacted as follows:

57-15-44. City tax levy for acquiring real estate for public building. The governing body of any city may levy taxes annually, not exceeding the limitation in subsection 22 of section 57-15-10 for a fund which must be used for the purpose of acquiring real estate as a site for public buildings, construction of public buildings, renovation and repair of public buildings, and the furnishing of public buildings, or for a city's participating share in urban renewal programs. The tax is to be levied, spread, and collected in the same manner as are other taxes in the city. Whether the levy shall be discontinued must be submitted to the qualified electors at the next regular election upon petition of twenty-five percent or more of the qualified electors voting in the last regular city election, the petition to be filed not less than sixty days before the election. If the majority of the qualified electors voting on the question vote to discontinue the levy, it may not again be levied without a majority vote of the qualified electors voting on the question at a later regular election on the question of relieving the tax, which question may be submitted upon petition as above provided or by decision of the governing board.

SECTION 40. AMENDMENT. Section 57-15-50 of the North Dakota Century Code is amended and reenacted as follows:

57-15-50. Levy authorized for county ambulance service. Upon petition of ten percent of the number of qualified electors of the county voting in the last election for governor or upon its own motion, the board of county commissioners of each county shall levy annually a tax not exceeding the limitation in subsection 23 of section 57-15-06.7, for the purpose of subsidizing county ambulance services; provided, that this tax must be approved by a majority of the qualified electors of the county voting on the question at a regular or special countywide election. The county may budget, in addition to its annual operating budget for subsidizing ambulance service, no more than ten percent of its annual operating budget as a depreciation expense to be set aside in a dedicated ambulance sinking fund deposited with the treasurer for the replacement of equipment and ambulances. The ten percent ambulance sinking fund must be in addition to the annual operating budget for subsidization, but the total of the annual operating budget and the annual ten percent ambulance sinking fund may not exceed the approved mill levy. If the county contains a rural ambulance service district or rural fire protection district that levies for and provides ambulance service, the property within that district is exempt from the county tax levy under this section upon notice from the governing body of the district to the board of county commissioners of the existence of the district.

SECTION 41. AMENDMENT. Section 57-15-51 of the North Dakota Century Code is amended and reenacted as follows:

57-15-51. Levy authorized for city ambulance service. Upon petition of ten percent of the number of qualified electors of the city voting in the last election for governor or upon its own motion, the governing body of each city in this state shall levy annually a tax of not to exceed five mills upon its taxable valuation, for the purpose of subsidizing city ambulance services; provided, that such tax must be approved by a majority of the qualified electors of the city voting on the question at a regular or special city election. Whenever a tax for county ambulance services is levied by a county, any city levying a tax for, or subsidizing city ambulance services,

shall upon written application to the county board of such county be exempted from such county tax levy. The city may set aside, as a depreciation expense, up to ten percent of its annual ambulance service operating or subsidization budget in a dedicated ambulance sinking fund, deposited with the auditor for replacement of equipment and ambulances. The ten percent ambulance sinking fund may be in addition to the actual annual ambulance budget but the total of the annual ambulance budget and the annual ten percent ambulance fund may not exceed the approved mill levy.

SECTION 42. AMENDMENT. Section 57-15-55 of the North Dakota Century Code is amended and reenacted as follows:

57-15-55. Tax levy for public transportation. The governing body of any city, upon approval by a majority vote of the qualified electors of the city voting on the question at any citywide election, may annually levy a tax not exceeding the limitation in subsection 25 of section 57-15-10 to provide funds for the provision and operation of a public transportation system within the city under a contract approved by the governing body with a private contractor, or by the city itself.

SECTION 43. AMENDMENT. Section 57-15-55.1 of the North Dakota Century Code is amended and reenacted as follows:

57-15-55.1. City tax levy for transportation of public school students. The governing body of any city, upon approval by a majority vote of the qualified electors of the city voting on the question at any citywide election, may annually levy a tax on the taxable valuation of property within the city to provide funds for fees charged by a school district pursuant to section 15-34.2-06.1 for transportation for public school students who reside in the city but who attend school in another city in the same school district. A city levying a tax pursuant to this section may levy only so much as will be required to provide an amount representing the difference between the estimated state transportation payment to be received by the school district on behalf of students residing in the city but attending school outside of the city and the estimated actual cost to be incurred by the district in providing transportation for those students.

SECTION 44. AMENDMENT. Subsection 3 of section 57-15-56 of the North Dakota Century Code is amended and reenacted as follows:

3. The levy authorized by this section may be imposed or removed only by a vote of a majority of the qualified electors of the county or city voting on the question directing the governing body to do so. The governing body shall put the issue before the qualified electors either on its own motion or when a petition in writing, signed by qualified electors of the county or city equal in number to at least ten percent of the total vote cast in the county or city for the office of governor of the state at the last general election, is presented to ~~said~~ the governing body.

SECTION 45. AMENDMENT. Subsection 3 of section 57-15-60 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The levy authorized by this section may be imposed or removed only by a vote of a majority of the qualified electors voting on the question in an election in the county, city, or park district. The governing body shall put the issue before the qualified electors either on its own motion or when a petition in writing, signed by qualified electors of the county or

city equal in number to at least ten percent of the total vote cast in the county or city for the office of governor of the state at the last general election, is presented to that governing body.

SECTION 46. AMENDMENT. Section 61-04.1-29 of the North Dakota Century Code is amended and reenacted as follows:

61-04.1-29. Creation of weather modification authority by election. When a petition signed by not less than twenty percent of the qualified electors of the county, as determined by the vote cast for the office of governor at the last preceding gubernatorial election, requesting an election upon the establishment of a weather modification authority is presented to the board of county commissioners, not later than forty-five days prior to the next countywide election, the board of county commissioners shall submit the question to the qualified electors of the county at the next countywide election. Upon approval by a majority of the votes cast on the question, the board of county commissioners shall, by resolution, establish a weather modification authority as described in section 61-04.1-23 with all powers set out in this chapter, including the power to certify a tax levy as provided by section 61-04.1-26.

SECTION 47. AMENDMENT. Section 61-04.1-30 of the North Dakota Century Code is amended and reenacted as follows:

61-04.1-30. Abolishment of weather modification authority by election. When a petition signed by not less than twenty percent of the qualified electors of the county, as determined by the vote cast for governor in the last preceding gubernatorial election, requesting an election upon the abolishment of a weather modification authority as created in sections 61-04.1-27 and 61-04.1-29 is presented to the board of county commissioners, not later than forty-five days prior to the next countywide election, the board of county commissioners shall submit the question to the qualified electors of the county at the next countywide election. Upon approval by a majority of the votes cast on the question, the board of county commissioners shall abolish the weather modification authority as of December thirty-first following the election. All unexpended funds remaining in the name of the weather modification authority, after all proper bills and expenses have been paid, shall be deposited in the general fund of the county.

SECTION 48. AMENDMENT. Section 61-04.1-31 of the North Dakota Century Code is amended and reenacted as follows:

61-04.1-31. Creation of weather modification authority by vote after resolution of county commissioners. The board of county commissioners of any county may, by resolution after a public hearing, submit the question of the creation of a weather modification authority to the electors of the county at the next countywide election. Upon approval by a majority of the votes cast on the question, the board of county commissioners shall pass a resolution creating a weather modification authority, as described in section 61-04.1-23. Such an authority shall have all powers provided by this chapter, including the authority to levy a tax as provided by section 61-04.1-26.

Approved March 23, 1997
Filed March 24, 1997

CHAPTER 109

HOUSE BILL NO. 1255

(Representative Belter)
(Senator Christmann)

COUNTY GOVERNING BODY RESIDENCY REQUIREMENT

AN ACT to create and enact a new section to chapter 11-10 of the North Dakota Century Code, relating to the residency of appointed members of county boards, commissions, or committees; and to amend and reenact subsection 2 of section 63-01.1-04 of the North Dakota Century Code, relating to the residency of members of county weed boards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 11-10 of the North Dakota Century Code is created and enacted as follows:

Board members must reside in taxing district. Unless otherwise provided by law, an appointed member of a county board, commission, or committee that has authority to levy taxes must be a resident of the area subject to taxation by the board, commission, or committee.

SECTION 2. AMENDMENT. Subsection 2 of section 63-01.1-04 of the North Dakota Century Code is amended and reenacted as follows:

2. The board of county commissioners shall establish the number of members of the board and shall establish board member areas. Each board member area must be contiguous. The board of county commissioners shall appoint a county weed board consisting of five or seven members. Members shall serve for a term of four years or until their successors are appointed and qualified. The terms of members must be staggered so that the terms of no more than two members expire each year. Any qualified elector in the board member area subject to taxation is eligible to represent that area on the board. In each county encompassing a city with a population of five thousand or more, one board member must be appointed from within the city limits of that city unless the city has established a city weed control program pursuant to section 63-01.1-10.1.

Approved March 23, 1997

Filed March 24, 1997

CHAPTER 110**SENATE BILL NO. 2370**

(Senators Kinnoin, Lee)
(Representatives Delmore, Devlin, Huether)

**COMMENCEMENT OF COUNTY COMMISSIONER
TERMS**

AN ACT to create and enact a new section to chapter 11-10 of the North Dakota Century Code, relating to terms of office for county commissioners; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 11-10 of the North Dakota Century Code is created and enacted as follows:

When terms of county commissioners commence. The regular term of office of each county commissioner, when the commissioner is elected for a full term, commences on the first Monday in December next succeeding the officer's election and each such commissioner shall qualify and enter upon the discharge of the commissioner's duties on or before the first Monday in December next succeeding the date of the commissioner's election or within ten days thereafter. If a commissioner is elected to fill an unexpired commission term held by an appointee, such officer may qualify and enter upon the discharge of the duties of such office at any time after receiving a certificate of election to that office but not later than the first Monday in December next succeeding the date of the commissioner's election to the unexpired term of office.

SECTION 2. EFFECTIVE DATE. This Act is effective for any full term of office of a county commissioner beginning after July 31, 1997.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 111

HOUSE BILL NO. 1420

(Representatives Soukup, Tollefson, Carlson)
(Senators Kinnoin, Nalewaja, Watne)

CLERK OF COURT FEES

AN ACT to amend and reenact subsection 1 of section 11-17-04 and section 14-03-22 of the North Dakota Century Code, relating to the fee for filing, depositing, or registering certain documents with the clerk of court and for performing marriage ceremonies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

² **SECTION 1. AMENDMENT.** Subsection 1 of section 11-17-04 of the North Dakota Century Code is amended and reenacted as follows:

1. The clerk of the district court shall charge and collect the following fees in civil cases:
 - a. For filing a case for decision that is not a small claims action, eighty dollars.
 - (1) Ten dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the civil legal services fund.
 - (2) For the filing of a petition for dissolution of marriage, annulment, or separation from bed and board, fifty dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the displaced homemaker account created by section 14-06.1-14.
 - (3) For all other filings, fourteen dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the state general fund.
 - b. For filing an answer to a case that is not a small claims action, fifty dollars.
 - c. For filing a small claims action in district court, ten dollars.
 - d. For filing any matter authorized to be filed in the office of the clerk of court other than under subdivision a, b, or c, ~~five~~ ten dollars.
 - e. For preparing, certifying, issuing, or transmitting any document, ~~five~~ ten dollars; or ~~such a~~ lesser fee as may be set ~~by a schedule to be promulgated~~ by the state court administrator.

² Section 11-17-04 was also amended by section 8 of Senate Bill No. 2002, chapter 31, and section 9 of Senate Bill No. 2002, chapter 31.

- f. For filing a motion to modify an order for alimony, property division, child support, or child custody, thirty dollars. The clerk shall deposit this fee with the state treasurer for deposit in the general fund of the state treasury.
- g. For filing an answer to a motion to modify an order for alimony, property division, child support, or child custody, thirty dollars.

SECTION 2. AMENDMENT. Section 14-03-22 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-03-22. Marriage license fee - Supplemental fee - Fee for marriage ceremony - Duties of officers. For the issuance and filing of a marriage license, the clerk of district court shall collect the sum of six dollars from the party applying for the license. The clerk shall also collect from the applicant a supplemental fee of twenty-nine dollars for aid to victims of domestic violence through the domestic violence prevention fund in accordance with chapter 14-07.1. ~~The clerk shall deposit the~~ For performing a marriage ceremony during regular courthouse hours, the clerk shall collect a fee of thirty dollars which is to be retained by the county. If the marriage ceremony is performed by the clerk at a time other than during regular courthouse hours, the clerk may collect and retain a fee in an amount to be determined by the clerk. Except as provided in this section, all collected sums fees must be deposited monthly with the county treasurer. The county treasurer shall forward the amount represented by supplemental fees to the state treasurer by the fifteenth of each month for crediting to the domestic violence prevention fund. The clerk shall prepare a copy of the license and certificate and transmit them to the registrar of vital statistics who shall record them in a book of records kept in the registrar's office for that purpose. The registrar shall index the records and upon request shall issue certified copies of the recorded license and certificate for a one dollar fee. The registrar shall keep an accurate account of these fees and shall turn them over to the state treasurer by the fifteenth of each month for crediting to the general fund.

Approved March 13, 1997
Filed March 13, 1997

CHAPTER 112

HOUSE BILL NO. 1247

(Representative Sveen)

RECREATION SERVICE DISTRICT COMMISSIONER COMPENSATION

AN ACT to amend and reenact section 11-28.2-02 of the North Dakota Century Code, relating to compensation of members of boards of recreation service district commissioners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-28.2-02 of the North Dakota Century Code is amended and reenacted as follows:

11-28.2-02. Meetings of recreation service districts - Election of board. The first meeting of the recreation service district ~~shall~~ must be held within thirty days after the district is organized at a time and place designated by the board of county commissioners. At ~~such~~ the meeting, the qualified voters, as defined in section 11-28.2-03, shall elect not less than five qualified voters of the district to serve as members of the board of recreation service district commissioners. Each member elected and qualified shall serve until the first annual meeting of the district. The voters of the district shall assemble and hold an annual meeting during the month of June of each year, at a time and place within the county designated by the board of recreation service district commissioners. In addition to the annual meeting, the board of recreation service district commissioners may call a special meeting of the voters of the district at ~~such~~ the time and place ~~as the board may select~~ selects. For any annual or special meeting, the board shall publish notice of the meeting not less than fifteen days ~~prior to~~ before the meeting in the official county newspaper of the county in which the district is located and the notice ~~shall~~ must be mailed ~~by regular mail~~ to property owners of the district as recorded in the county treasurer's office in which the district is located not less than fifteen days ~~prior to~~ before the meeting. ~~Not less~~ No fewer than five qualified voters of the district ~~shall~~ must be elected to serve on the board of recreation service district commissioners at the annual meeting. Each member ~~so~~ elected shall serve a term of three years, until a successor is elected and qualified. The term of each member ~~shall~~ must be established so that the term of approximately one-third of the members ~~shall~~ terminate each year. The members of ~~such~~ the board ~~shall serve without~~ are entitled to receive compensation in an amount of no more than twenty-five dollars per meeting of the board, as determined by the board.

Approved March 7, 1997
Filed March 10, 1997

CORRECTIONS, PAROLE, AND PROBATION

CHAPTER 113

SENATE BILL NO. 2127

(Senators Heitkamp, Thane)

(At the request of the Department of Corrections and Rehabilitation)

CORRECTIONAL FACILITIES

AN ACT to amend and reenact sections 12-44.1-01, 12-44.1-02, 12-44.1-03, 12-44.1-04, 12-44.1-05, 12-44.1-06, 12-44.1-06.1, 12-44.1-07, 12-44.1-08, 12-44.1-09, 12-44.1-10, 12-44.1-11, 12-44.1-12, 12-44.1-13, 12-44.1-14, 12-44.1-15, 12-44.1-17, 12-44.1-18, 12-44.1-18.1, 12-44.1-18.2, 12-44.1-19, 12-44.1-20, 12-44.1-21, 12-44.1-22, 12-44.1-24, 12-44.1-25, 12-44.1-26, and 12-44.1-27, relating to correctional facilities; and to repeal sections 12-44.1-16 and 12-44.1-23, relating to jails and regional corrections centers; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-44.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-01. Definitions. As used in this chapter:

1. ~~"City jail" means a confinement facility established and maintained by a city.~~
2. ~~"County jail" means a confinement facility established and maintained by a county.~~ "Correctional facility" means a city or county jail or detention center, regional corrections center, or juvenile detention center for the detention or confinement of persons in accordance with law. The use of the term does not imply and may not be used to require the provision of services including treatment, counseling, vocational, or educational services, except as may otherwise be required or provided for under this chapter.
3. ~~2.~~ "Inmate" means any person, whether sentenced or unsentenced, who is detained or confined in a jail, regional corrections center, or juvenile detention center correctional facility.
4. ~~3.~~ "Jail" means a correctional facility, including a county or city jail or a regional corrections center.
5. ~~4.~~ "Jail administrator" "Administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a jail, regional corrections center, or juvenile detention center correctional facility.

- 6- 5. ~~"Jail~~ "Correctional facility staff" means ~~custodial~~ correctional personnel with titles such as jailer, deputy, counselor, correctional officer, or any other title, whose duties include the ongoing supervision of the inmates in a ~~jail, regional corrections center, or juvenile detention center~~ correctional facility.
- 7- 6. "Juvenile detention center" means a publicly or privately established and maintained correctional facility for the ~~confinement~~ detention of ~~juvenile inmates~~ juveniles. The term does not include the North Dakota youth correctional center.
- 8- 7. "Regional corrections center" means a correctional facility established and maintained by more than one county or city, or a combination of counties and cities, for the confinement of ~~their~~ inmates; ~~or a county or city facility contracting to confine the inmates of other counties and cities.~~
8. "Trained correctional facility staff" means correctional personnel who have completed a course of training approved by the department of corrections and rehabilitation.

SECTION 2. AMENDMENT. Section 12-44.1-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-44.1-02. Establishing ~~jails~~ correctional facilities - ~~Jail~~ Correctional facility contracts - ~~Regional corrections centers.~~ For the confinement of lawfully committed persons, the governing body of a county or city shall do or shall participate in the doing of, one of the following:

1. Establishing and maintaining a ~~jail~~ correctional facility at county or city expense.
2. Contracting for ~~jail~~ correctional facility services and use of ~~jail~~ correctional facilities with another county or city maintaining a ~~jail, with a regional corrections center,~~ correctional facility or with the state or federal government.
3. Establishing and maintaining, pursuant to chapter 54-40 and this chapter, a ~~regional corrections center~~ correctional facility in conjunction with other counties and cities.

A county or city may ~~additionally~~ contract with a county or city of another state for the confinement of lawfully committed county or city inmates from that state in a North Dakota ~~jail or juvenile detention center~~ correctional facility, or for the confinement of lawfully committed North Dakota inmates in a county or city correctional facility of such other state. A city or county may contract with another correctional facility in this state for correctional services for purposes of safety, security, health and medical reasons, or for correctional facility administration. A city or county may contract for the confinement of inmates lawfully sentenced by a tribal court. A city or county may contract for ~~adult jail services and juvenile detention~~ correctional facility services with a privately operated ~~jail facility or juvenile detention center~~ correctional facility. Contracts with private agencies providing ~~adult jail or juvenile detention~~ correctional facility services may be entered into for up to seven years.

SECTION 3. AMENDMENT. Section 12-44.1-03 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-03. Safety and sanitation.

1. Each ~~jail~~ correctional facility shall comply with state and local fire, sanitation, safety, and health codes.
2. The ~~governing body~~ administrator of a ~~jail~~ correctional facility, to ensure adequate fire protection, shall install firefighting equipment at appropriate locations throughout the ~~jail~~ correctional facility.
3. Each ~~jail~~ correctional facility shall have a smoke detection system approved by the state fire marshal and tested on a regular basis.
4. Designated exits ~~shall~~ must permit prompt evacuation of inmates and ~~jail~~ correctional facility staff in an emergency.

SECTION 4. AMENDMENT. Section 12-44.1-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-44.1-04. Administration - Organization - Management. The ~~governing body~~ administrator of each ~~jail~~ correctional facility shall:

1. Formulate an operations manual, available to all ~~jail~~ correctional facility staff, which delineates the written policies and procedures for operating and maintaining the ~~jail~~ correctional facility.
2. Review and update all policies and procedures in the operations manual at least annually.
3. Specify a ~~single jail~~ an administrator in the operations manual to whom all ~~jail~~ correctional facility staff are responsible. The operations manual shall include the ~~jail~~ administrator's duties, responsibilities, and authority for the management of the ~~jail~~ correctional facility staff, inmates, programs, and physical plant.
4. Ensure that ~~all full-time jail~~ correctional facility staff who work in direct and continuing contact with inmates receive ~~jail management~~ correctional facility training as determined and ~~funded~~ approved by the department of corrections and rehabilitation ~~or such other training as approved by the department of corrections and rehabilitation.~~

SECTION 5. AMENDMENT. Section 12-44.1-05 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-05. Meal payments. A ~~jail~~ An administrator or ~~jail~~ correctional facility staff member receiving lump sum monthly payments for providing inmate meals shall submit an itemized account of the meal expenses to the governing body of the ~~jail~~ correctional facility. Any amount of the monthly payment in excess of the itemized account shall be returned to the general operating fund or be given as salary to the person providing the meals, as determined by the governing body of the ~~jail~~ correctional facility.

SECTION 6. AMENDMENT. Section 12-44.1-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-44.1-06. Grades of jail correctional facilities.

1. The department of corrections and rehabilitation shall, following inspection pursuant to section 12-44.1-24, grade jails correctional facilities as to length of allowable inmate confinement based upon construction, size, and usage, as follows:
 - a. "Grade one" means a jail correctional facility for confining inmates not more than one year.
 - b. "Grade two" means a jail correctional facility for confining inmates not more than ninety days.
 - c. "Grade three" means a jail correctional facility for confining inmates not more than ninety-six hours.
2. The length of confinement of a prisoner may be temporarily increased on a case-by-case basis in grade one and grade two jails correctional facilities upon the request of the jail administrator and the approval of the department of corrections and rehabilitation.

SECTION 7. AMENDMENT. Section 12-44.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-06.1. Jail Correctional facilities standards. Grade two and grade three jails correctional facilities do not need to provide outdoor recreation areas, ~~contact visitation areas~~, or exercise rooms separate from dayrooms. Correctional facilities may allow contact visitation subject to the safety, security, and administration requirements of the correctional facility.

SECTION 8. AMENDMENT. Section 12-44.1-07 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-07. Who may be confined in jail correctional facilities. The following persons may be confined in a jail correctional facility:

1. Persons charged with offenses or ordered by a court to be detained for trial.
2. Persons committed by a court to confinement in order to secure their attendance as witnesses at the trial of any criminal cause.
3. Persons sentenced to imprisonment upon conviction of an offense, and any other person committed or detained as authorized by law.

SECTION 9. AMENDMENT. Section 12-44.1-08 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-08. Confinement of state and federal inmates.

1. Grade one jails correctional facilities may contract for the confinement of persons sentenced to imprisonment in the state penitentiary offenders in the custody of the department of corrections and rehabilitation if sufficient room is not available at the penitentiary, for purposes of safety, security, discipline, medical care, or when the department of corrections

and rehabilitation determines it may be in the best interests of the offender or the department of corrections and rehabilitation.

2. ~~All jails;~~ A correctional facility to which ~~any a~~ person is sent or committed by legal process issued by or under the authority of the United States; shall receive such ~~inmate~~ person into custody for safe detention until discharged under federal law.
3. ~~The United States shall be charged, for the confinement of its inmates, the amount actually required and expended by the jail maintaining the federal inmates.~~ A correctional facility detaining or confining federal inmates is entitled to compensation in accordance with fee schedules established by the United States.
4. ~~Repealed by S.L. 1985, ch. 169, § 3.~~
5. ~~Whenever required to do so by any United States officer, a jail administrator or jail staff member shall make out under oath a list of federal inmates in custody, with the date of commitment, by whom committed, and for what offenses. Such list shall be transmitted to the United States district court judge of the district in which the jail is located.~~
6. ~~Any~~ A grade one or grade two ~~jail~~ correctional facility may be used for the ~~safekeeping~~ detention of a fugitive from justice in accordance with any act of Congress or the laws of another state. ~~Such jail shall be~~ The correctional facility is entitled to reasonable compensation from the officer or jurisdiction regaining custody of the fugitive.

SECTION 10. AMENDMENT. Section 12-44.1-09 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-09. Housing of inmates. In grade one and grade two ~~jails~~ correctional facilities and, where practicable, in grade three ~~jails~~ correctional facilities, the following groups of inmates must be housed separately from each other:

1. Female inmates from male inmates.
2. Juveniles from adults.
3. Persons detained for hearing or trial from inmates under sentence of imprisonment, unless authorized to be housed together by the ~~jail~~ administrator for security, order, or rehabilitation.
4. Persons detained for hearing or trial or under sentence of imprisonment from ~~detained witnesses and other persons detained under civil commitment~~ persons otherwise detained by order of the court, unless authorized to be housed together by the ~~jail~~ administrator for security, order, or rehabilitation.
5. ~~Mentally disturbed inmates and other inmates with special needs as determined by the jail administrator from the remainder of the jail population, unless authorized to be housed together by the jail administrator for security, order, or rehabilitation.~~ Inmates who may have special needs as determined by the correctional facility or whose

behavior may present a serious threat to the safety or security of the correctional facility, the staff, the inmate, or other inmates.

6. ~~Special management inmates whose behavior presents a serious threat to the safety and security of the jail, the inmate, the staff, or the general inmate population from the remainder of the jail population.~~

SECTION 11. AMENDMENT. Section 12-44.1-10 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-10. Detained witnesses and pretrial detainees. Detained witnesses and persons held in custody awaiting arraignment or trial ~~shall~~ may not be restricted in their activities to any extent greater than required to maintain order and security and to assure appearance at arraignment or trial. Witnesses and pretrial detainees shall not be required to do labor other than keeping their living areas clean nor shall they be required to participate in ~~jail~~ correctional facility programs.

SECTION 12. AMENDMENT. Section 12-44.1-11 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-11. Commitment papers - Copies - Endorsement. When an inmate is confined by virtue of any process directed to the ~~jail~~ administrator and the process requires a return to the court from which it was issued, the ~~jail~~ administrator shall keep a copy of the process with the return made thereon. The copy, certified by the ~~jail~~ administrator, ~~shall be~~ is prima facie evidence of ~~his~~ the administrator's right to retain the inmate in custody. All ~~such~~ instruments or copies by which an inmate is committed or released shall be endorsed and filed by the ~~jail~~ administrator. The file and its contents shall be delivered to the ~~jail~~ administrator's successor.

SECTION 13. AMENDMENT. Section 12-44.1-12 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-12. Inmate personal property. A written, itemized inventory of all personal property taken from an inmate at the time of admission shall be made by ~~jail~~ correctional facility staff. ~~Such~~ The property, including money and other valuables, shall be secured and the inmate given a receipt for all property to be held until the inmate's release unless the inmate requests a different disposition in writing. Upon release, the items of inmate personal property shall be compared with the inventory list, and the inmate shall sign a receipt for the property's return. If the inmate is released for transfer to another ~~jail~~ or correctional facility, the correctional officer transporting the inmate shall sign the receipt. The releasing ~~jail~~ correctional facility shall maintain a copy of the property receipt for its files.

SECTION 14. AMENDMENT. Section 12-44.1-13 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-13. Supervision of inmates.

1. Inmates shall be supervised on a twenty-four-hour basis by trained ~~jail~~ correctional facility staff.
2. ~~Jail~~ Correctional facility staff shall be located in such proximity to inmate living areas to permit the staff to hear and respond promptly to calls for help.

3. Each ~~jail~~ correctional facility shall provide for the personal observation of inmates on an irregular but frequent schedule.
4. Each ~~jail~~ correctional facility shall maintain sufficient staff to perform all functions relating to the security, control, custody, and supervision of inmates.
5. A ~~matron~~ correctional facility female staff member shall be available at all times during which a female inmate is confined.
6. Inmates shall be prohibited from supervising, controlling, or exerting any authority over other inmates.
7. The ~~jail administrator~~ correctional facility shall maintain a daily written record of information concerning inmates ~~as prescribed by rule~~.

SECTION 15. AMENDMENT. Section 12-44.1-14 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-14. Inmate rights. ~~The governing body~~ Subject to reasonable safety, security, discipline, and correctional facility administration requirements, the administrator of each jail correctional facility shall:

1. Ensure ~~and facilitate the right of~~ inmates ~~to~~ have confidential access to attorneys and their authorized representatives.
2. Ensure that inmates are not subjected to discrimination based on race, national origin, color, creed, sex, economic status, or political belief.
3. Ensure equal access by male and female inmates to programs and services available through the correctional facility.
4. Ensure access to mail, telephone use, and visitors.
5. Ensure that inmates are properly fed, clothed, and housed.
6. Ensure that inmates have adequate medical care.
7. Ensure that inmates may reasonably exercise their religious beliefs.

SECTION 16. AMENDMENT. Section 12-44.1-15 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-15. Searches. Searches of inmates ~~should~~ may only be conducted:

1. ~~Be conducted so as to avoid~~ Without undue or unnecessary force; ~~embarrassment,~~ or indignity to the ~~individual~~ person searched.
2. ~~Be conducted no more frequently than~~ When reasonably necessary to control contraband in the institution or to recover missing or stolen property.

SECTION 17. AMENDMENT. Section 12-44.1-17 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-17. Inmate educational and counseling programs. ~~The governing body of each grade one and grade two jail shall formulate a plan whereby~~ A correctional facility may utilize the resources of the community are utilized to provide inmates with available educational, vocational, counseling, and work release opportunities. ~~Each jail administrator shall~~ A correctional facility may, if possible, and subject to reasonable safety, security, discipline, and correctional facility administration requirements, provide opportunities for access to available religious, mental health, alcoholism, and addiction counseling by inmates desirous of such counseling.

SECTION 18. AMENDMENT. Section 12-44.1-18 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-18. Inmate work programs. ~~The governing body of a grade one jail shall~~ A correctional facility may maintain a written inmate work assignment plan that provides for inmate employment, subject to the number of work opportunities available and the maintenance of jail security ~~reasonable safety, security, discipline, and correctional facility administration requirements.~~ The inmate work plan shall may provide for inmate employment in jail correctional facility maintenance and operation, in public works projects, and or in various community service projects.

SECTION 19. AMENDMENT. Section 12-44.1-18.1 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-18.1. Inmate work release program. ~~The governing body of a city or county, with the concurrence of affected parties, A correctional facility may provide for a work release program for inmates confined in a city or county penal institution unless the court has ordered that an inmate may not receive work release. Work release projects may include public service and community service projects, and may utilize any particular skill or trade of participating inmates. At the discretion of the judge with jurisdiction over a participating inmate, for every eight hours of work by a participating inmate, the inmate's period of confinement shall be reduced by two days.~~ The governing body correctional facility shall take measures to maintain jail security among participating inmates correctional facility security and safety and to protect the safety of the public.

SECTION 20. AMENDMENT. Section 12-44.1-18.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-44.1-18.2. Work release program - Room and board costs to be paid by inmate. Any inmate who participates in a work release program shall pay the ~~governing body of the jail or regional correction center~~ correctional facility for the room and board costs incurred by the inmate while confined in the ~~jail or regional correction~~ correctional facility. The jail administrator shall determine the amount of meal and lodging costs to be paid by the inmate. The amount may not exceed ten dollars per day or the funds earned by the inmate, whichever is less.

SECTION 21. AMENDMENT. Section 12-44.1-19 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-19. Removal of inmate in emergency not an escape. If a ~~jail~~ correctional facility or any adjoining building shall be on fire or another emergency occurs, and the inmates may be exposed to danger, the ~~jail~~ correctional facility staff shall remove the inmates to a place of safety, and there confine them as long as

necessary to avoid the danger. The removal and confinement shall not be deemed an escape of such inmates.

SECTION 22. AMENDMENT. Section 12-44.1-20 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-20. Punishment of inmate. ~~A jail administrator or jail staff member having charge of an inmate under this chapter may use only such means as are necessary to control inmate behavior. If an inmate confined in any jail is disorderly or willfully destroys jail property, the jail administrator may cause the inmate to be secured or kept in solitary confinement for not more than three days for any one offense. A correctional facility shall adopt rules for safety, security, discipline, and correctional facility administration. If an inmate violates any of the rules of a correctional facility, the correctional facility may impose disciplinary sanctions in accordance with its rules.~~

SECTION 23. AMENDMENT. Section 12-44.1-21 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-21. Prohibited acts. ~~A jail administrator or a member of the jail staff shall be guilty of a class A misdemeanor if he or she knowingly:~~

- ~~1. Places or keeps male and female inmates together in the same cell unless they are husband and wife. It is unlawful to deliver or administer any alcoholic beverage or controlled substance to a person detained in a correctional facility except for the delivery or administration of controlled substances or alcoholic beverages in accordance with the orders or prescription of a licensed physician and the approval, except in emergency circumstances, of the correctional facility administrator.~~
- ~~2. Gives, sells, or delivers to any inmate, for any cause whatever, any alcoholic beverage unless prescribed by a physician. Any other person, other than a physician or person under the direction of a physician, who gives, sells, or delivers an alcoholic beverage to an inmate shall be guilty of a class A misdemeanor. A person detained in a correctional facility may not possess any controlled substance or alcoholic beverage unless the substance or beverage is prescribed in accordance with the prescription or orders of a licensed physician, and the approval, except in emergency circumstances, of the correctional facility administrator.~~
- ~~3. Uses corporal punishment against an inmate. A person, other than an official or employee of the correctional facility, who violates subsection 1 by delivering or administering a controlled substance is guilty of a class B felony. An official or employee of the correctional facility who violates subsection 1 by delivering or administering a controlled substance is guilty of a class A felony. A person who violates subsection 1 by delivering alcoholic beverages is guilty of a class A misdemeanor.~~
- ~~4. Uses physical force except as necessary for self-defense or control of inmates, protection of another person from imminent physical attack, or the prevention of riot or escape. A person who violates subsection 2 by possessing a controlled substance is guilty of a class B felony. A person who violates subsection 2 by possessing alcoholic beverages is guilty of a class A misdemeanor.~~

5. As used in this section, "controlled substance" is as defined in subsection 6 of section 19-03.1-01, and includes counterfeit substances as defined in subsection 7 of section 19-03.1-01.

SECTION 24. AMENDMENT. Section 12-44.1-22 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-44.1-22. Jail Correctional facility register - Contents. Each jail administrator is responsible for a jail correctional facility register in which must be entered such inmate information on such forms as the department of corrections and rehabilitation shall prescribe by rule.

SECTION 25. AMENDMENT. Section 12-44.1-24 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-44.1-24. Jail Correctional facility standards - Inspections. The department of corrections and rehabilitation shall:

1. Prescribe rules establishing minimum standards for the construction, operation, and maintenance of public or private juvenile detention centers, county and city jails, and regional corrections centers correctional facilities.
2. Prescribe rules for the care and treatment of inmates.
3. Cause rules and regulations to be made available to inmates or be posted in at least one conspicuous place in each jail, juvenile detention center, or regional corrections center and in each cell or cellblock where they may be read by inmates correctional facility.
4. Appoint a jail correctional facility inspector qualified by special experience, education, or training to inspect each jail, juvenile detention center, and regional corrections center correctional facility at least once each year to determine if the rules and regulations have been complied with. Inspection ~~shall~~ must include, ~~but not be limited to,~~ health and safety, fire and life safety, security, rehabilitation programs, recreation, treatment of persons confined, and personnel training.

SECTION 26. AMENDMENT. Section 12-44.1-25 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-44.1-25. Inspection report - Notice of noncompliance - Hearing.

1. A written report of each inspection pursuant to section 12-44.1-24 shall be made by the jail correctional facility inspector within thirty days following each inspection.
2. Copies of the report must be sent by the jail correctional facility inspector to the ~~governing body~~ administrator responsible for the jail, juvenile detention center, or regional corrections center correctional facility and must also be submitted to the department of corrections and rehabilitation for review.
3. The inspection report must specify those respects in which a jail, juvenile detention center, or regional corrections center correctional facility does or does not comply with the required minimum standards and rules.

The inspection report of noncompliance must specify the time limits within which such standards or rules are to be met, with consideration being given to the magnitude or seriousness of the deficiencies and their potential effects on the health and safety of inmates, the cost of correction, and other information deemed relevant by the department of corrections and rehabilitation.

4. Where the nature and extent of deficiencies are such that an immediate order of full or partial closure is deemed necessary by the department of corrections and rehabilitation to preserve the health and safety of inmates, the period of time for correction may be dispensed with and an order of immediate full or partial closure may be issued by the department of corrections and rehabilitation.
5. Within thirty days after receipt of a notice or order of immediate closure, the ~~governing body administrator~~ administrator of a ~~jail, juvenile detention center, or regional corrections center~~ correctional facility may request a review of the determination by the department of corrections and rehabilitation pursuant to chapter 28-32. The review must be heard not more than forty-five days following the request, unless the period is extended by the department of corrections and rehabilitation.

SECTION 27. AMENDMENT. Section 12-44.1-26 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-44.1-26. ~~Jail~~ Correctional facility variances.

1. ~~All jails, juvenile detention centers, and regional corrections centers~~ A correctional facility shall comply with the requirements of the rules ~~and regulations promulgated~~ adopted by the department of corrections and rehabilitation unless a variance has been granted by the department of corrections and rehabilitation. Any request for a variance must be in writing and must cite the rule in question, the reasons for requesting the variance, the period of time for the variance, and an explanation of how the policy of the rule will be served without strict compliance with the rule.
2. The department of corrections and rehabilitation may grant a variance if it is determined that:
 - a. Compliance with the rule would cause extreme hardship as a result of circumstances which are unique to the ~~jail, juvenile detention center, or regional corrections center~~ correctional facility.
 - b. The ~~jail, juvenile detention center, or regional corrections center~~ correctional facility will substantially comply with the policy of the rule during the time of the variance from the rule.
3. The department of corrections and rehabilitation shall give written reasons for granting or denying a variance request.
4. In previously existing ~~jails, juvenile detention centers, or regional corrections centers~~ correctional facilities where specific rules cannot be complied with because of alleged difficulty or undue hardship, exception to specific physical plant rules must be made if the intent of the rule is met and security, supervision of prisoners, established programs, or the

safe, healthful, or efficient operation of the ~~jail, juvenile detention center, or regional corrections center~~ correctional facility is not seriously affected.

SECTION 28. AMENDMENT. Section 12-44.1-27 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-44.1-27. Corrective action - Enforcement.

1. Upon receipt of an inspection report stating noncompliance, the ~~governing body administrator~~ of a ~~jail, juvenile detention center, or regional corrections center~~ correctional facility shall promptly meet with the department of corrections and rehabilitation's inspection personnel to consider the inspection report. The governing body shall then initiate appropriate corrective action within ninety days following receipt of the inspection report, or may voluntarily close the ~~jail, juvenile detention center, or regional corrections center~~ correctional facility or the objectionable portion.
2. If the governing body of a ~~jail, juvenile detention center, or regional corrections center~~ correctional facility fails to initiate corrective action within ninety days after receipt of the inspection report and notice of noncompliance, or fails to close the ~~jail, juvenile detention center, or regional corrections center~~ correctional facility or objectionable portion, the director of the department of corrections and rehabilitation is authorized to petition the district court of the judicial district in which the ~~jail, juvenile detention center, or regional corrections center~~ correctional facility is located to order the initiation of corrective action or the closure of the ~~jail, juvenile detention center, or regional corrections center~~ correctional facility. The petition to the district court must include the inspection report regarding the ~~jail, juvenile detention center, or regional corrections center~~ correctional facility. The governing body shall have twenty days to respond to the petition and shall serve a copy of the response on the director of the department of corrections and rehabilitation by certified mail.
3. A hearing must be held on the petition of the department of corrections and rehabilitation before the district court. An order must be rendered by the district court which dismisses the petition, directs that corrective action be initiated in some form by the governing body, or directs the closure of the ~~jail, juvenile detention center, or regional corrections center~~ correctional facility.

SECTION 29. REPEAL. Sections 12-44.1-16 and 12-44.1-23 of the North Dakota Century Code are repealed.

Approved March 21, 1997
Filed March 21, 1997

CHAPTER 114

SENATE BILL NO. 2108

(Senator C. Nelson)

(Representative DeKrey)

(At the request of the Department of Corrections and Rehabilitation)

PENITENTIARY FACILITIES AND INMATES

AN ACT to amend and reenact sections 12-47-01, 12-47-02, 12-47-18.1, 12-47-34, 12-47-36, 12-48-15, and subsection 2 of section 29-27-07 of the North Dakota Century Code, relating to penitentiary facilities and to inmate transfers, escapes, records, and moneys; and to repeal section 32-22-36 of the North Dakota Century Code, relating to writs for transfer of prisoners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-47-01 of the North Dakota Century Code is amended and reenacted as follows:

12-47-01. Penitentiary - Location - Purpose. The penitentiary located at the city of Bismarck in the county of Burleigh ~~shall be~~ is the general penitentiary and prison of this state for the punishment and reformation of offenders against the laws of this state in which all offenders who are sentenced to imprisonment therein ~~shall~~ must be confined securely and employed and governed in the manner provided by law. The director of the department of corrections and rehabilitation may establish affiliated facilities at other locations throughout the state within the limits of legislative appropriations.

SECTION 2. AMENDMENT. Section 12-47-02 of the North Dakota Century Code is amended and reenacted as follows:

12-47-02. ~~Within jurisdiction of Burleigh County~~ Jurisdiction over penitentiary and affiliated facilities. The penitentiary and the grounds and premises thereof, for the purpose of all judicial proceedings, ~~shall be deemed to be~~ is within and a part of the county of Burleigh, and the courts of ~~said~~ that county ~~shall~~ have jurisdiction of all crimes or public offenses committed within the ~~same~~ penitentiary. The jurisdiction of a crime or public offense committed within an affiliated facility of the penitentiary is in the county where the affiliated facility is located.

SECTION 3. AMENDMENT. Section 12-47-18.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-47-18.1. Transfer of persons between state correctional facilities. ~~When the warden determines that for purposes of safety of other inmates or the general public or for discipline or medical care or when in the best interest of the inmate or the facility in which the inmate is housed, the~~ The warden may transfer the inmate an offender to any facility under the warden's control or contract to transfer an offender to another correctional facility for purposes of safety, security, discipline, medical care, or when the warden determines it may be in the best interests of the public, the offender, or the penitentiary.

SECTION 4. AMENDMENT. Section 12-47-34 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-47-34. Escapes from warden's custody - Warden may offer reward for recapture - Payment of reward. The warden, with the approval of the director of the department of corrections and rehabilitation, may adopt ~~any~~ measures deemed proper to aid in necessary for the detection and capture of persons offenders escaping from the custody of the warden or the department of corrections and rehabilitation. ~~When an inmate~~ If an offender in the custody of the warden or the department of corrections and rehabilitation escapes, the warden shall ~~may~~ use every all lawful means at the warden's command for the apprehension of such person, and for that purpose the offender. The warden may offer a reward ~~of~~ not to exceed one thousand dollars and not less than one hundred dollars for information leading to ~~such~~ apprehension of an offender who has escaped from the custody of the warden or the department of corrections and rehabilitation.

SECTION 5. AMENDMENT. Section 12-47-36 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-47-36. Certain penitentiary inmates' records Records confidential. ~~The clinical, behavioral, treatment, medical, and social records and materials of a penitentiary inmate, regardless of source, are confidential and privileged and may not be disclosed directly or indirectly to the inmate or anyone other than the parole board, a public or private treatment facility, a recognized law enforcement agency, and others entitled by law to receive such information. A state or federal court may order the inspection of such confidential and privileged records and materials, or parts thereof, by individuals or organizations having shown a proper legitimate purpose and reason to inspect such records and materials. The medical, psychological, treatment, or social records of the department of corrections and rehabilitation or its divisions or departments relating to persons in the custody or under the supervision and management of the department of corrections and rehabilitation must be kept confidential and may not be disclosed directly or indirectly to any person, organization, or agency, except as otherwise provided in this section. A court may order the inspection of such records, or parts of such records, upon application to the court and a showing that there is a proper and legitimate purpose for the inspection of the records, with service of the application on the department of corrections and rehabilitation and opportunity for the department of corrections and rehabilitation to submit a written response. Notwithstanding any other provisions of law relating to privilege or confidentiality, records may be inspected by or disclosed to the following persons, organizations, or agencies without prior application to the court: the governor; the pardon advisory board, if the governor has appointed a pardon advisory board; the parole board; any division, department, official, or employee of the department of corrections and rehabilitation; another state receiving a parolee or probationer under the provisions of chapter 12-56 or 12-56.1; a federal, state, regional, or county correctional facility receiving physical custody of a person under the legal custody of the department of corrections and rehabilitation; the employees in the office of the attorney general and investigators, consultants, or experts retained by the state; the risk management division of the office of management and budget for the purpose of investigating and defending actions or claims under chapter 32-12.2; the state's attorney and district court of the county where the judgment of conviction was entered; a state or federal court where a person in the custody or under the supervision of the department of corrections and rehabilitation has commenced litigation and the records are relevant to the litigation; or municipal, county, state, or federal law enforcement agencies. A criminal defendant's presentence investigation report, together with any attachment or addendum, is subject to rule 32 of the North Dakota Rules of Criminal Procedure and any amendments made thereto. The parole board may permit the inspection of a person's preparole report, or parts of the report, prepared for the parole board. The employment status of a person in the custody of or under the~~

supervision and management of the department of corrections and rehabilitation may be disclosed to an agency or official charged with the enforcement of child support. Medical, psychological, or treatment records may be disclosed without prior application to the court to a public hospital or treatment facility, the department of human services, or to a licensed private medical or treatment facility, when necessary for the evaluation, treatment, or care of a person in the custody or under the supervision of the department of corrections and rehabilitation.

SECTION 6. AMENDMENT. Section 12-48-15 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-48-15. Disposition of moneys earned - Warden to keep account of money earned by inmates - Investment in interest-bearing accounts.

1. The warden of the penitentiary shall keep an account for each inmate. Not more than fifty percent of an inmate's penitentiary earnings, as provided by penitentiary rules, must be withheld from an inmate and deposited in a separate account for the inmate to accumulate a sum of money and may not be made available to the inmate until the inmate's release from the penitentiary, except as authorized by the warden. The remainder of an inmate's earnings must be paid made available to the inmate on a regular basis. ~~All moneys in the inmate's account must be paid to the inmate in full when discharged.~~
2. Inmates may, in writing, authorize the warden or designee to deposit any of their accumulated earnings from the prison industries, hobby, work release, or any other prison program in an interest-earning account in the Bank of North Dakota for the benefit of the inmate. The account must be a two-signature account requiring the inmate's signature and that of an authorized designated officer or employee of the state penitentiary for withdrawal.
3. ~~Other inmate income or funds from sources outside of the penitentiary may be directly deposited or invested by the inmate in any bank or other organization, unless sentencing stipulations, court orders, the inmate's competency, or other interests of the inmate require that the warden deposit such income or funds or a portion thereof in the above-noted Bank of North Dakota account for the inmate's benefit and protection. Before making such a deposit of funds or income from sources outside of the penitentiary for the inmate's benefit and protection, the warden must receive the approval of the director of the division of adult services and provide a written letter of explanation to the inmate. Funds directly invested or deposited by inmates into their independent accounts, even when assisted in doing so by an officer or employee of the penitentiary, shall in no way make the penitentiary or its officers or employees responsible or accountable for such inmate's investments and deposits. The warden may directly deposit an inmate's funds from sources outside of the penitentiary in any bank or account the inmate may designate. If a court order does not allow an inmate to designate a bank or account other than a Bank of North Dakota account or if it is necessary for the benefit and protection of the inmate, the warden, upon written explanation to the inmate, shall deposit an inmate's funds from sources outside the penitentiary into a Bank of North Dakota account. The department of corrections and rehabilitation and its divisions, departments, officers, and employees may not be held responsible or~~

liable for any inmate income or funds deposited into a bank or account designated by an inmate.

4. The warden, ~~through the staff,~~ is responsible for guiding inmates in making proper use of their funds to pay their obligations, including the payment of court costs, court-appointed counsel fees, ~~and court-ordered restitution, and to provide for their support for dependent relatives,~~ or to provide for their own medical, surgical, eye care, or dental treatment or services not generally provided by the state. The warden may withdraw funds from an inmate's penitentiary account or Bank of North Dakota two-signature account, without the inmate's signature, to meet the inmate's legitimate financial obligations. Before the funds may be withdrawn, the inmate must first receive written notice and be provided a penitentiary administrative hearing with the right to penitentiary staff assistance and the right to appeal to the director of the department of corrections and rehabilitation. ~~The sum of money as provided by penitentiary rules from each inmate's earnings required to be deposited and accumulated by this section is not available to the inmate until discharge, unless authorized by the warden. The remainder of the inmate's earnings, including interest earned, is available to the inmate under the supervision and control of the warden or designee. An inmate is not entitled to prior written notice, administrative hearing, or right to an appeal to the department of corrections and rehabilitation when funds are to be withdrawn for payment of a court-ordered obligation, including child support, provided the inmate has had notice and an opportunity to be heard in the court proceedings.~~
5. The warden may pay an inmate all funds in the inmate's account, less the inmate's outstanding obligations to the penitentiary, when the inmate is transferred to a county jail, regional correctional center, or placed in community corrections confinement. The warden shall pay an inmate all funds in the inmate's account less the inmate's outstanding obligations to the penitentiary, when the inmate is transferred to a correctional facility outside of this state, is released on parole, or the inmate is discharged from the penitentiary.

SECTION 7. AMENDMENT. Subsection 2 of section 29-27-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. After assuming custody of the convicted person, the department of corrections and rehabilitation may transfer the inmate from one correctional facility to another for the purposes of ~~diagnosis and study, treatment, and rehabilitation,~~ as best fits the needs of the inmate and for the protection and welfare of the community and the inmate safety, security, discipline, medical care, or if the department determines it is in the best interest of the public, the inmate, or the department.

SECTION 8. REPEAL. Section 32-22-36 of the North Dakota Century Code is repealed.

Approved March 21, 1997
Filed March 21, 1997

CHAPTER 115

SENATE BILL NO. 2045

(Legislative Council)
(Judiciary Committee)
(Senators W. Stenehjem, Traynor)
(Representative Kretschmar)

PARDON ADVISORY BOARD

AN ACT to create and enact chapter 12-55.1 of the North Dakota Century Code, relating to the pardon advisory board and to pardons, conditional pardons, reprieves, and commutations; to amend and reenact subsection 5 of section 12-60-16.2, subsections 15 and 17 of section 12.1-34-02, subsection 4 of section 12.1-34-03, subsection 5 of section 27-20-52, subsection 1 of section 28-32-01, and subsection 1 of section 54-07-01.2 of the North Dakota Century Code, relating to the pardon advisory board and to membership of boards; and to repeal chapter 12-55 of the North Dakota Century Code, relating to pardons, reprieves, and commutations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 12-55.1 of the North Dakota Century Code is created and enacted as follows:

12-55.1-01. Definitions. In this title, unless the context otherwise requires:

1. "Commutation" means the change of the punishment to which a person is sentenced to a less severe punishment.
2. "Conditional pardon" means a pardon, commutation, reprieve, or remission of fine subject to terms and conditions established by the governor upon the recommendation of the pardon advisory board.
3. "Department" means the department of corrections and rehabilitation.
4. "Pardon" means the removal of punishment or custody imposed upon a person for the commission of an offense. A pardon does not remove the fact of that person's conviction or plea or finding of guilt for an offense unless specifically stated in the certificate of pardon.
5. "Remission of fine" means a release or partial release of a fine.
6. "Reprieve" means a temporary relief from or postponement of the execution of a criminal sentence.

12-55.1-02. Pardon advisory board - Membership. The governor may appoint a pardon advisory board to consist of five members including the attorney general and two members of the parole board. The governor shall appoint two persons who are residents and citizens of this state to the remaining two positions. The governor shall appoint a chairperson from within the membership of the pardon advisory board. The governor may dissolve the pardon advisory board at any time. The members appointed by the governor are entitled to be paid compensation and expenses at the same rate paid to members of the legislative assembly. The board

shall provide information and make recommendations to the governor concerning any matters before the governor under this chapter.

12-55.1-03. Pardon advisory board meetings - Rules. If the governor appoints a pardon advisory board, the pardon advisory board may adopt rules necessary to govern its proceedings, including the time and place of meetings of the board. The governor may call meetings of the pardon advisory board as the governor deems necessary to carry out the board's duties.

12-55.1-04. Governor may remit fines and grant commutations, pardons, and reprieves. The governor has the power to remit fines and grant commutations, reprieves, pardons, and conditional pardons after judgment of conviction. If the governor grants a conditional pardon, the pardon must state the terms and conditions of the pardon. The governor shall sign every commutation, reprieve, pardon, conditional pardon, or remission of fine granted by the governor. The recommendations of the pardon advisory board and the determination of the governor are not reviewable by any court.

12-55.1-05. Pardon clerk - Duties. The director of the division of parole and probation shall serve as the pardon clerk under this chapter. The pardon clerk shall:

1. Maintain a register of all applications filed for commutation, reprieve, pardon, conditional pardon, or remission of fine and shall maintain a complete and accurate record of all proceedings in connection with the applications, including all correspondence, documents, evidence, and appearances made in connection with the application.
2. Conduct investigations, employ psychologists, psychiatrists, or other specialists necessary for the determination of matters before the pardon advisory board or the governor under this chapter, and perform other duties in connection with matters under this chapter as may be requested by the pardon advisory board or the governor.
3. Maintain a record of every commutation, reprieve, pardon, conditional pardon, or remission of fine granted or refused, along with the reasons for each action.

12-55.1-06. Application for commutation, reprieve, pardon, conditional pardon, or remission of fine. An application for commutation, reprieve, pardon, conditional pardon, or remission of fine must be made with the pardon clerk on a form prescribed by the clerk and in accordance with any rules adopted under this chapter.

12-55.1-07. Notice of application. The pardon clerk shall provide written notice of an application for a commutation, reprieve, pardon, conditional pardon, or remission of fine to the district court and the state's attorneys in the county or counties where the judgment of conviction was entered against the applicant. The notice must include the name of the applicant, the date of entry and docket number of the criminal judgment, the crime or crimes stated in the criminal judgment, and the date and place for the meeting on the application.

12-55.1-08. Governor may reconsider action. If the governor has granted an application for a commutation, reprieve, conditional pardon, or remission of fine and the applicant is still in custody in any correctional facility, the governor may reconsider the decision any time before the applicant is released from the correctional facility. If an applicant is released from custody pursuant to a

conditional pardon and the applicant has violated any of the terms or conditions of the conditional pardon, the governor may revoke the conditional pardon in the same manner provided for violation of any of the terms or conditions of parole. In all other cases, the governor may reconsider a decision on an application if the reconsideration is made within thirty days from the date of the initial decision. A decision made on reconsideration may not be reviewed by any court.

12-55.1-09. Statements of judge and state's attorney. The judge and the state's attorney may make any recommendations that may be of assistance to the governor, pardon advisory board, or parole board in considering the person's case. The judge before whom any person has been convicted of a felony and the state's attorney of the county in which the crime was committed may file with the clerk of court separate official statements that may include:

1. The facts and circumstances constituting and surrounding the crime for which the person was convicted.
2. The age of the person.
3. All available information regarding the person before the commission of the crime for which the person was convicted.
4. All available information regarding the person's habits, associates, disposition, and reputation.
5. All facts and circumstances that may indicate whether the person is capable of becoming a law-abiding citizen.
6. The state's attorney's reasons for the recommended sentence and the court's reasons for the sentence imposed.

12-55.1-10. Duty of court reporter and clerk of court. The court reporter, at the direction of the judge or state's attorney, shall prepare the official statements of the judge and state's attorney. The clerk of court with whom the statements are filed shall attach a copy of the statements to the criminal judgment. The clerk shall provide to the department the criminal judgment with the attached copy of the official statements.

12-55.1-11. Records. The records of an applicant for commutation, reprieve, pardon, conditional pardon, or remission of fine are subject to section 12-47-36. The pardon clerk may permit the inspection of an application for a commutation, reprieve, pardon, conditional pardon, or remission of fine; the recommendations of the pardon advisory board, if any; and the decision of the governor, including any decision made after reconsideration or after proceedings for revocation.

SECTION 2. AMENDMENT. Subsection 5 of section 12-60-16.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. The North Dakota state penitentiary, ~~board of pardons~~ pardon clerk, parole board, and local correctional facility administrators shall furnish the bureau with all information concerning the receipt, escape, death, release, pardon, conditional pardon, reprieve, parole, commutation of sentence, ~~granting of executive clemency~~, or discharge of an individual who has been sentenced to that agency's custody for any reportable offense which is required to be collected, maintained, or disseminated by

the bureau. In the case of an escape from custody or death while in custody, information concerning the receipt and escape or death; must also be furnished.

SECTION 3. AMENDMENT. Subsections 15 and 17 of section 12.1-34-02 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

15. Notice of final disposition and parole procedures. Victims and witnesses must be informed by the prosecuting attorney of the final disposition of any criminal case. The prosecuting attorney shall explain to the victim the parole process and pardon process and further advise the victim of the necessity of advising the custodial authority and the parole board and the pardon ~~board~~ clerk of the victim's address in order for the victim to receive further information under other provisions of this chapter.
17. Participation in parole board and pardon ~~board~~ decision. Victims may submit a written statement for consideration by the parole board ~~or, the governor, or the pardon advisory board, if one has been appointed,~~ or, the governor, or the pardon advisory board taking any action on a defendant's request for parole or pardon. Victims of violent crimes may at the discretion of the parole board ~~or, the governor, or the pardon advisory board~~ or, the governor, or the pardon advisory board personally appear and address the parole board ~~or, the governor, or the pardon advisory board~~ or, the governor, or the pardon advisory board. Notice must be given by the parole board or pardon ~~board~~ clerk informing the victim of the pending review and of the victim's rights under this section. The victim must be provided notice of the decision of the parole board or of the governor and the recommendations of the pardon advisory board, if any, and, if applicable, notice of the date of the prisoner's release on parole or the prisoner's pardon, conditional pardon, reprieve, commutation, or remission of fine. Notice must be given within a reasonable time after the parole board or ~~pardon board reaches its~~ the governor makes a decision but in any event ~~prior to~~ before the parolee's or pardoned prisoner's release from custody.

SECTION 4. AMENDMENT. Subsection 4 of section 12.1-34-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. To notify law enforcement authorities, prosecuting attorney, custodial authority, parole board, pardon ~~board~~ clerk, and court, where appropriate, of any change of address. The address information provided to these persons must be kept confidential.

¹ **SECTION 5. AMENDMENT.** Subsection 5 of section 27-20-52 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

¹ Section 27-20-52 was also amended by section 3 of Senate Bill No. 2209, chapter 138.

5. A court in which the child is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceeding, or by officials of penal institutions and other penal facilities to which the child is committed, or by ~~a~~ the parole or board, the governor, or the pardon advisory board, if one has been appointed, in considering the child's parole or discharge or in exercising supervision over the child; and

² **SECTION 6. AMENDMENT.** Subsection 1 of section 28-32-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, or employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency shall be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
 - a. The office of management and budget except with respect to rules relating to the state building code as authorized or required under section 54-21.3-03, rules relating to the Model Energy Code as required under section 54-21.2-03, rules relating to the central personnel system as authorized under section 54-44.3-07, rules relating to state purchasing practices as required under section 54-44.4-04, rules relating to records management as authorized or required under chapter 54-46, and rules relating to the central microfilm unit as authorized under chapter 54-46.1.
 - b. The adjutant general with respect to the division of emergency management.
 - c. The council on the arts.
 - d. The state auditor.
 - e. The department of economic development and finance.
 - f. The dairy promotion commission.
 - g. The education factfinding commission.
 - h. The educational telecommunications council.
 - i. The board of equalization.

² Section 28-32-01 was also amended by section 1 of Senate Bill No. 2398, chapter 449; section 7 of Senate Bill No. 2033, chapter 182; section 8 of Senate Bill No. 2336, chapter 157; section 1 of House Bill No. 1042, chapter 278; section 1 of House Bill No. 1183, chapter 451; section 2 of House Bill No. 1158, chapter 277; and section 24 of Senate Bill No. 2046, chapter 51.

- j. The board of higher education.
- k. The Indian affairs commission.
- l. The industrial commission with respect to the activities of the Bank of North Dakota, the North Dakota housing finance agency, the North Dakota municipal bond bank, and the North Dakota mill and elevator association.
- m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under chapter 54-23.4.
- n. The ~~board of pardons~~ pardon advisory board.
- o. The parks and recreation department.
- p. The parole board.
- q. The superintendent of public instruction, except with respect to rules prescribed under section 15-21-07 and rules implementing chapter 15-22.
- r. The state fair association.
- s. The state department of health with respect to the state toxicologist.
- t. The board of university and school lands except with respect to activities under chapter 47-30.1.
- u. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.
- v. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.
- w. The secretary of state with respect to rules adopted for the presidential preference contest under section 16.1-11-02.2.

³ **SECTION 7. AMENDMENT.** Subsection 1 of section 54-07-01.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding sections 2-05-01, 4-18.1-04, 4-27-04, 6-01-03, 6-09-02.1, ~~42-55-04~~ 12-55.1-02, 12-59-01, 15-21-17, 15-38-17, 15-39.1-05, 15-65-02, 20.1-02-23, 23-01-02, 23-25-02, 36-01-01, 37-18.1-01, 50-06-05.6, 50-06.1-16, 54-34.3-10, 54-54-02, 55-01-01, 55-06-01, 61-02-04, and 61-28-03, all members of the following boards and commissions must,

³ Section 54-07-01.2 was also amended by section 3 of House Bill No. 1142, chapter 170.

subject to the limitations of this section, be considered to have resigned from such boards and commissions effective January first of the first year of each four-year term of the governor:

- a. The aeronautics commission.
- b. The milk marketing board.
- c. The dairy promotion commission.
- d. The state banking board.
- e. The state credit union board.
- f. The advisory board of directors to the Bank of North Dakota.
- g. The ~~board of pardons~~ pardon advisory board.
- h. The state parole board.
- i. The state board of public school education.
- j. The education standards and practices board and the administrator's professional practices board.
- k. The board of trustees for the teachers' fund for retirement.
- l. The educational telecommunications council.
- m. The state game and fish advisory board.
- n. The health council.
- o. The air pollution control advisory council.
- p. The board of animal health.
- q. The administrative committee on veterans' affairs.
- r. The committee on aging.
- s. The committee on employment of people with disabilities.
- t. The commission on the status of women.
- u. The North Dakota council on the arts.
- v. The state historical board.
- w. The Yellowstone-Missouri-Fort Union commission.
- x. The state water commission.
- y. The state water pollution control board.

SECTION 8. REPEAL. Chapter 12-55 of the North Dakota Century Code is repealed.

Approved April 1, 1997

Filed April 2, 1997

CHAPTER 116

SENATE BILL NO. 2128

(Senator Sand)

(Representative Carlisle)

(At the request of the Department of Corrections and Rehabilitation)

PAROLE PROCEEDINGS AND REQUIREMENTS

AN ACT to amend and reenact sections 12-59-02, 12-59-04, 12-59-05, 12-59-07, 12-59-08, 12-59-09, 12-59-10, 12-59-15, and subsections 1 and 2 of section 12.1-33-02.1, relating to parole proceedings, records, requirements, and violations; and to repeal section 12-59-16, relating to execution of an order for recommitment of a prisoner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁴ **SECTION 1. AMENDMENT.** Section 12-59-02 of the North Dakota Century Code is amended and reenacted as follows:

12-59-02. Meetings - Quorum - Compensation. The board shall organize by selecting a chairman. Meetings of the board shall ~~must~~ be held ~~at the state penitentiary on call of the chairman~~ as often as required to properly conduct the business of the board, but in any event not less than six times per year. ~~Two members shall constitute a quorum, and no action shall be taken without~~ The parole board may only take action upon the concurrence of at least two members. Members ~~shall~~ are entitled to be compensated at the ~~rate of thirty dollars same rate provided for members of the legislative council under section 54-35-10,~~ per day for each day actually and necessarily spent in the performance of their duties as board members plus the same mileage and expenses as are authorized for state officials and employees. The director of the division of parole and probation, or the director's designee, shall be the clerk for the parole board.

SECTION 2. AMENDMENT. Section 12-59-04 of the North Dakota Century Code is amended and reenacted as follows:

12-59-04. Records ~~privileged confidential~~ - Inspection. All ~~presentence and department of corrections and rehabilitation records, including~~ preparole reports, and the supervision history, obtained in the discharge of official duty by any member or employee of the parole board; ~~shall be privileged and shall not be disclosed directly or indirectly to anyone other than the board, the judge, committees of the legislative assembly, or others entitled by law to receive such information, except that the board or court may, in its discretion, permit the inspection of the report or parts thereof by the defendant or prisoner or his attorney, or other person having a proper interest therein, whenever the best interest or welfare of a particular defendant or prisoner makes such action desirable or helpful or~~ employee of a division or department of the department of corrections and rehabilitation, are confidential and may not be disclosed except in the manner provided under section 12-47-36. An

⁴ Section 12-59-02 was also amended by section 10 of Senate Bill No. 2052, chapter 432.

application for parole and the decision of the parole board on the application are open records.

SECTION 3. AMENDMENT. Section 12-59-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-59-05. Consideration by board - Guarantee. At a meeting to be determined by the parole board, within one year after a prisoner's admission to the penitentiary, or within six months after the prisoner's admission to the Missouri River correctional center, at such intervals thereafter as it may determine and by application pursuant to section 12-59-08, the board may deny or grant parole or continue consideration to another meeting. Applications for parole must be reviewed in accordance with the rules adopted by the parole board. The board shall consider all pertinent information regarding each prisoner applicant, including the circumstances of the offense, the presentence report, the previous applicant's family, educational, and social history and criminal record, the applicant's conduct, employment, and attitude in prison, and the reports of such physical and mental examinations as have been made participation in education and treatment programs while in the custody of the department of corrections and rehabilitation, and the applicant's medical and psychological records.

SECTION 4. AMENDMENT. Section 12-59-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-59-07. Requirements precedent to parole. No parole may be granted to any person confined in the penitentiary or the Missouri River correctional center unless the person has maintained a good record at the penitentiary or the Missouri River correctional center for a reasonable period prior to application for a parole and the board is convinced that the applicant will conform to all the rules and regulations adopted by said board. The parole board may grant an application for parole if the board is convinced the applicant will conform to the terms and conditions of parole the board or the division of parole and probation may establish for the applicant. The division of parole and probation may establish intermediate conditions of parole, including incarceration for a period of seventy-two hours and restitution, subject to the subsequent approval of the parole board.

SECTION 5. AMENDMENT. Section 12-59-08 of the North Dakota Century Code is amended and reenacted as follows:

12-59-08. Application for parole - Hearing - Emergency paroles. All applications for parole shall be filed with the clerk of the board. Applications may be heard at a meeting to be determined by the parole board, after the initial consideration guaranteed by section 12-59-05. An applicant for parole shall file an application with the division of parole and probation. The parole board may consider the application at a meeting scheduled by the chairman. The board may request an applicant to personally appear before the board before the board makes a decision on an application. The board may grant or deny parole, or grant a conditional parole, or continue its consideration to another meeting. In the event of an emergency application, the ex officio members of the board of pardons, acting as authorized by section 12-55-04, may, in accordance with section 12-55-19, application for emergency parole, two members of the parole board may grant such emergency parole, subject to terms and conditions of emergency parole that may be established by two members of the parole board or by the division of parole and probation. Thereafter the parolee shall be under the supervision and jurisdiction of the parole board. An applicant who receives parole remains in the legal custody of the department of corrections and rehabilitation until the expiration of the maximum

term or terms of imprisonment for which the applicant was sentenced, less any sentence reduction the applicant has received.

SECTION 6. AMENDMENT. Section 12-59-09 of the North Dakota Century Code is amended and reenacted as follows:

12-59-09. Contents of application for parole. An application for parole shall must be in writing, addressed to the ~~board~~ division of parole and probation, and ~~shall~~ must be signed by the ~~convict~~ applicant or some person in ~~his~~ the applicant's behalf. ~~It shall state concisely the ground upon which the parole is sought.~~

SECTION 7. AMENDMENT. Section 12-59-10 of the North Dakota Century Code is amended and reenacted as follows:

12-59-10. Notice of application for parole - ~~To whom and by whom given -~~ Service. Notice of an application for a parole and of the time and place of hearing the same shall be given by the clerk of the board to the judge and the state's attorney who participated in the trial of the applicant, and if the judge or state's attorney is no longer in office, notice also shall be given to his successor in office. Such notice shall set forth the name of the person making application, the crime of which he was convicted, the time and place of the conviction, the sentence imposed, the name of the judge who presided over the trial, and the name of the state's attorney who prosecuted the trial of the applicant. Service of such notice shall be made by registered or certified mail. The division of parole and probation shall provide written notice of an application for parole to the district court and state's attorney's office in the county or counties where judgment of conviction was entered against the applicant. The notice must include the name of the applicant, the date of entry and docket number of the criminal judgment, the crime or crimes stated in the criminal judgment, and the date and place for the meeting on the application.

SECTION 8. AMENDMENT. Section 12-59-15 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-59-15. Breach of parole - Hearings - Order of recommitment.

1. When it is alleged that a parolee has violated ~~the conditions of the parole agreement, the chief parole officer~~ any of the terms or conditions of parole established by the parole board or by the division of parole and probation, the director of the division of parole and probation or the director's designee may issue a warrant for the arrest of the parolee.
2. ~~If an alleged violation is for failing to appear for any meeting required by the parolee's supervisory officer without just cause or for leaving the jurisdiction without permission, the parole board may suspend the running of the time period of parole until the parolee is in the custody of any law enforcement personnel in the state. Upon issuance of a warrant of arrest for a parole violation, the running of the time period of parole must be suspended until the parolee is in the custody of a law enforcement agency.~~
3. The parolee ~~shall be~~ is entitled to a preliminary hearing, as promptly as is convenient after the arrest and reasonably near the place of the alleged violation or arrest, to determine whether there is probable cause ~~or reasonable grounds to believe to find~~ that the parolee violated ~~the conditions of the parole agreement~~ any of the terms and conditions of

parole established by the board or by the division of parole and probation.

4. The preliminary hearing ~~shall~~ must be conducted before the ~~chief parole officer~~ director of the division of parole and probation or any other independent hearing officer authorized by the chief parole officer, but in no case shall it be conducted before anyone directly involved in the case director. The preliminary hearing must be conducted by a disinterested hearing officer not directly involved in the supervision of the parolee or by the person bringing the allegation of a parole violation.
5. If at the preliminary hearing the hearing officer determines that the parolee violated the conditions of the parole agreement by failing to appear for any meeting required by the parolee's supervisory officer without just cause or by leaving the jurisdiction without permission there is probable cause to find that the parolee has violated any of the terms and conditions of parole established by the board or by the division of parole and probation, the board may redetermine the time remaining in the period of parole to reflect any portion of the period during which the parolee was not under supervision or not in the custody of law enforcement personnel in the state.
6. If the hearing officer determines there is probable cause to find that the parolee has violated any of the terms and conditions of parole established by the board or by the division of parole and probation, the parolee must be returned to the ~~penitentiary or the Missouri River correctional center~~ physical custody of the department of corrections and rehabilitation, transferred to a county jail another correctional facility or the state hospital, or released from actual custody on the terms of the parole agreement pursuant to such terms and conditions as may be established by the parole board or the division of parole and probation, pending a final revocation hearing before the parole board. If the board determines, at the final revocation hearing, that the parolee has violated ~~the conditions of the parole agreement~~ any of the terms and conditions of parole established by the board or by the division of parole and probation, it may order that the parolee be recommitted to the ~~penitentiary or the Missouri River correctional center,~~ as provided in the ~~parolee's sentence, to serve in custody, in the penitentiary or the Missouri River correctional center,~~ physical custody of the department of corrections and rehabilitation to serve all or part of the remaining time of the sentence that has not been served in custody in the penitentiary or the Missouri River correctional center.
7. At any hearing pursuant to this section a record ~~shall~~ must be made and the parolee shall have:
 - a. Written notice of the purpose of the hearing and the alleged violations.
 - b. The opportunity to be heard in person and present witnesses and documentary evidence.
 - c. The opportunity to confront and cross-examine adverse witnesses, unless the hearing officer determines that ~~such~~ confrontation would create a risk of harm to the witness.

- d. A written statement as to the reasons for the decision.
8. When the board determines the parolee has ~~violated subsection 2~~ absconded from supervision, the board may order the parolee to pay the costs of being returned to the board. Moneys recovered under this subsection must be remitted to the department of corrections and rehabilitation.

SECTION 9. AMENDMENT. Subsections 1 and 2 of section 12.1-33-02.1 of the North Dakota Century Code are amended and reenacted as follows:

1. A person ~~shall~~ may not be disqualified to practice, pursue, or engage in any occupation, trade, or profession for which a license, permit, certificate, or registration is required from any state agency, board, commission, or department solely because of prior conviction of an offense. However, a person may be denied a license, permit, certificate, or registration because of prior conviction of an offense if it is determined that such person has not been sufficiently rehabilitated, or that the offense has a direct bearing upon a person's ability to serve the public in the specific occupation, trade, or profession.
2. A state agency, board, commission, or department shall consider the following in determining sufficient rehabilitation:
 - a. The nature of the offense and whether it has a direct bearing upon the qualifications, functions, or duties of the specific occupation, trade, or profession.
 - b. Information pertaining to the degree of rehabilitation of the convicted person.
 - c. The time elapsed since the conviction or release. Completion of ~~probation or parole, or~~ a period of five years after final discharge or release from any term of probation, parole or other form of community corrections, or imprisonment, without subsequent conviction shall be deemed prima facie evidence of sufficient rehabilitation.

SECTION 10. REPEAL. Section 12-59-16 of the 1995 Supplement to the North Dakota Century Code is repealed.

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 117**SENATE BILL NO. 2085**

(Judiciary Committee)

(At the request of the Attorney General)

**CRIMINAL HISTORY INFORMATION AND
REPORTABLE OFFENSES**

AN ACT to amend and reenact section 12-60-16.4 of the North Dakota Century Code, relating to criminal history record information and reportable offenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁵ **SECTION 1. AMENDMENT.** Section 12-60-16.4 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-60-16.4. Criminal history record information - Reportable offenses.

Criminal justice agencies shall report to the bureau reportable events for each felony and for each of the following offenses:

1. Class A and B misdemeanor offenses in sections 6-08-16 and 6-08-16.1.
2. Class A misdemeanor offenses included in title 12.1.
3. Class A and B misdemeanor offenses in chapters 19-03.1 and 19-03.2, and in ~~section~~ sections 12-47-21 and 20.1-01-18.
4. Class B misdemeanor offenses in sections 12.1-17-01, 12.1-20-12.1, 12.1-21-05, 12.1-21-06, 12.1-22-03, 12.1-23-05, and 12.1-29-03.
5. Class A misdemeanor offenses in chapter 14-07.1 and sections 43-15.1-02, 51-16.1-04, 53-06.1-16, and 53-06.1-16.1.
6. Class A misdemeanor offenses in title 62.1.
7. Municipal ordinance violations that are equivalent to misdemeanors listed in subsections 1 through 6.

Approved March 5, 1997

Filed March 6, 1997

⁵ Section 12-60-16.4 was also amended by section 1 of Senate Bill No. 2160, chapter 347, and section 1 of House Bill No. 1167, chapter 428.

CRIMINAL CODE

CHAPTER 118

HOUSE BILL NO. 1046

(Legislative Council)

(Criminal Justice Committee)

(Representatives Kretschmar, R. Kelsch, Mahoney, Kliniske, Brown)

(Senator Nalewaja)

PRESENTENCE RISK ASSESSMENTS

AN ACT to create and enact a new subsection to section 12.1-01-04 and a new subsection to section 50-06-05.1 of the North Dakota Century Code, relating to the definition of risk assessment and the authority of the department of human services to establish the method of risk assessment; to amend and reenact subsection 11 of section 12.1-32-02 of the North Dakota Century Code, relating to risk assessments in certain presentence investigations; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 12.1-01-04 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

"Risk assessment" means an initial phase with a secondary process approved by the department of human services for the evaluation of the likelihood that a person who committed an offense will commit another similar offense. The initial phase is an assessment tool that is administered by a trained probation and parole officer. A predetermined score on the initial phase initiates the secondary process that includes a clinical interview, psychological testing, and verification through collateral information or psychophysiological testing, or both. The department of human services shall perform the secondary process of the risk assessment.

¹ **SECTION 2. AMENDMENT.** Subsection 11 of section 12.1-32-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11. Before sentencing a defendant on a felony charge under section 12.1-20-03, 12.1-20-11, 12.1-27.2-02, 12.1-27.2-03, 12.1-27.2-04, or 12.1-27.2-05, a court shall order the department of corrections and rehabilitation to conduct a presentence investigation and to prepare a presentence report. A presentence investigation for a charge under section 12.1-20-03 must include a risk assessment. A court may order

¹ Section 12.1-32-02 was also amended by section 3 of Senate Bill No. 2153, chapter 124.

the inclusion of a risk assessment in any presentence investigation. In all felony or class A misdemeanor offenses, in which force, as defined in section 12.1-01-04, or threat of force is an element of the offense or in violation of section 12.1-22-02, or an attempt to commit the offenses, a court, unless a presentence investigation has been ordered, must receive a criminal record report before the sentencing of the defendant. Unless otherwise ordered by the court, the criminal record report must be conducted by the department of corrections and rehabilitation after consulting with the prosecuting attorney regarding the defendant's criminal record. The criminal record report must be in writing, filed with the court before sentencing, and made a part of the court's record of the sentencing proceeding.

SECTION 3. A new subsection to section 50-06-05.1 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

In consultation with the department of corrections and rehabilitation, to formulate standards before July 1, 1998, which must be satisfied for a risk assessment under section 12.1-32-02.

SECTION 4. EFFECTIVE DATE. Section 2 of this Act becomes effective on July 1, 1998.

Approved April 3, 1997
Filed April 3, 1997

CHAPTER 119

SENATE BILL NO. 2369

(Senator Heitkamp)
(Representative Gulleson)

ILLEGAL TRANSPORTATION OF HAZARDOUS WASTE

AN ACT to amend and reenact subsections 1 and 2 of section 12.1-06.1-01, subsection 3 of section 12.1-06.1-02, section 12.1-06.1-04, subsections 1, 2, 4, 5, and 7 of section 12.1-06.1-05, subsection 1 of section 12.1-06.1-06, and subsections 1 and 2 of section 12.1-06.1-07 of the North Dakota Century Code, relating to the illegal transportation or disposal of radioactive waste material or hazardous waste; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 2 of section 12.1-06.1-01 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. For the purpose of section 12.1-06.1-02:
 - a. "Combination" means persons who collaborate in carrying on or furthering the activities or purposes of a criminal association even though ~~such~~ those persons may not know each other's identity or membership in the combination may change from time to time or one or more members may stand in a wholesaler-retailer or other arm's-length relationship with others as to activities or dealings between or among themselves in an illicit operation.
 - b. "Criminal association" means any combination of persons or enterprises engaging, or having the purpose of engaging, on a continuing basis in conduct which violates any one or more provisions of any felony statute of this state or which is the willful and illegal transportation or disposal of radioactive waste material or hazardous waste.
2. For the purposes of sections ~~12.1-06.1-03~~ 12.1-06.1-02 through 12.1-06.1-07, unless the context otherwise requires:
 - a. "Control" means the possession of a sufficient interest to permit substantial direction over the affairs of an enterprise.
 - b. "Enterprise" means any corporation, limited liability company, association, labor union, or other legal entity or any group of persons associated in fact although not a legal entity.
 - c. "Financial institution" means any bank, trust company, savings and loan association, credit union, or money lender under the jurisdiction of the state department of banking and financial institutions or its commissioner, or the state banking board, or the state credit union board.

- d. "Illegal transportation or disposal of radioactive waste material or hazardous waste" means the transportation or disposal into a nonhazardous waste landfill or the intentional and unlawful dumping into or on any land or water of radioactive waste material in violation of section 23-20.2-09 or rules adopted pursuant to that section which were in effect on January 1, 1997, or hazardous waste in willful violation of chapter 23-20.3 or the rules adopted pursuant to that chapter which were in effect on January 1, 1997, except for the handling of conditionally exempt small quantities of hazardous waste as referenced in section 33-24-02-05 of the North Dakota Administrative Code.
- e. "Pattern of racketeering activity" requires least two acts of racketeering activity, one of which occurred after July 8, 1987, and the last of which occurred within ten years, excluding any period of imprisonment, after the commission of a prior act of racketeering activity.
- e. f. "Racketeering" means any act including any criminal attempt, facilitation, solicitation, or conspiracy, committed for financial gain, which is chargeable or indictable under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable by imprisonment for more than one year, regardless of whether such act is charged or indicted, involving:
- (1) Homicide.
 - (2) Robbery.
 - (3) Kidnapping.
 - (4) Forgery.
 - (5) Theft.
 - (6) Bribery.
 - (7) Gambling.
 - (8) Usury.
 - (9) Extortion.
 - (10) Unlawful delivery of controlled substances.
 - (11) Trafficking in explosives, weapons, or stolen property.
 - (12) Leading a criminal association.
 - (13) Obstructing or hindering criminal investigations or prosecutions.
 - (14) Asserting false claims including, but not limited to, false claims asserted through fraud or arson.

- (15) Fraud.
- (16) Sale of unregistered securities or real property securities and transactions involving such securities by unregistered dealers or salesmen.
- (17) Obscenity.
- (18) Child pornography.
- (19) Prostitution.

f. g. "Records" means any book, paper, writing, record, computer program, or other material.

SECTION 2. AMENDMENT. Subsection 3 of section 12.1-06.1-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Leading ~~organized crime~~ a criminal association is a class B felony.

SECTION 3. AMENDMENT. Section 12.1-06.1-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-06.1-04. Judicial powers over racketeering criminal cases. During the pendency of any criminal case charging an offense included in the definition of racketeering if it is shown to the satisfaction of the court when ruling upon the application for the order that ~~such the~~ the racketeering offense has occurred as a part of a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03, the court may, in addition to its other powers, issue an order pursuant to subsections 1 and 2 of section 12.1-06.1-05. Upon conviction of a person for an offense included in the definition of racketeering if it is shown to the satisfaction of the court when ruling upon the application for the order that ~~such the~~ the racketeering offense has occurred as a part of a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03, the court may, in addition to its other powers, issue an order pursuant to section 12.1-06.1-05.

SECTION 4. AMENDMENT. Subsections 1, 2, 4, 5, and 7 of section 12.1-06.1-05 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. A person who sustains injury to person, business, or property by a pattern of racketeering activity or by a violation of section 12.1-06.1-02 or 12.1-06.1-03 may file an action in district court for the recovery of treble damages and the costs of the suit, including reasonable attorney fees. The state may file an action in behalf of those persons injured or to prevent, restrain, or remedy a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03.
2. The district court has jurisdiction to prevent, restrain, and remedy a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03 after making provision for the rights of all innocent persons affected by ~~such the~~ the violation and after hearing or trial, as appropriate, by issuing appropriate orders.
4. Following a determination of liability orders may include:

- a. Ordering any person to divest himself of any interests, direct or indirect, in any enterprise.
- b. Imposing reasonable restrictions on the future activities or investments of any person, including prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect the laws of this state, to the extent the constitutions of the United States and this state permit.
- c. Ordering dissolution or reorganization of any enterprise.
- d. Ordering the payment of treble damages and appropriate restitution to those persons injured by a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03.
- e. Ordering the payment of all costs and expenses and reasonable attorneys' fees concerned with the prosecution and investigation of any offense included in the definition of racketeering if upon ~~such~~ application for the order it is shown to the satisfaction of the court that ~~such~~ the racketeering offense has occurred as a part of a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03, civil and criminal, incurred by the state or county as appropriate to be paid to the general fund of the state or county ~~which~~ that brings the action.
- f. Forfeiture, pursuant to chapter 32-14, to the state school fund of the state or county as appropriate under section 29-27-02.1, to the extent not already ordered to be paid in other damages:
 - (1) Any property or other interest acquired or maintained by a person in violation of section 12.1-06.1-02 or 12.1-06.1-03.
 - (2) Any interest in, security of, claims against, or property or contractual right of any kind affording a source of influence over any enterprise ~~which~~ that a person has established, operated, controlled, conducted, or participated in the conduct of in violation of section 12.1-06.1-02 or 12.1-06.1-03.
 - (3) All proceeds traceable to an offense included in the definition of racketeering and all moneys, negotiable instruments, securities, and other things of value used or intended to be used to facilitate commission of the offense if upon application for the order it is shown to the satisfaction of the court that ~~such~~ the racketeering offense has occurred as a part of a pattern of racketeering activity.
- g. Payment to the state school fund of the state or county as appropriate under section 29-27-02.1 of an amount equal to the gain a person has acquired or maintained through an offense included in the definition of racketeering if upon application for the order it is shown to the satisfaction of the court that ~~such~~ the racketeering offense has occurred as a part of a pattern of racketeering activity.

5. In addition to or in lieu of an action under this section the state may file an action for forfeiture to the state school fund of the state or county as appropriate under section 29-27-02.1, to the extent not already ordered paid pursuant to this section, of:
 - a. Any interest acquired or maintained by a person in violation of section 12.1-06.1-02 or 12.1-06.1-03.
 - b. Any interest in, security of, claims against, or property or contractual right of any kind affording a source of influence over any enterprise ~~which~~ that a person has established, operated, controlled, conducted, or participated in the conduct of in violation of section 12.1-06.1-02 or 12.1-06.1-03.
 - c. All proceeds traceable to an offense included in the definition of racketeering and all moneys, negotiable instruments, securities, and other things of value used or intended to be used to facilitate the commission of the offense if upon application for the order it is shown to the satisfaction of the court that such racketeering offense has occurred as a part of a pattern of racketeering activity.
7. Notwithstanding any law to the contrary, the initiation of civil proceedings related to violations of any offense included in the definition of racketeering or a violation of section 12.1-06.1-02 or 12.1-06.1-03 ~~shall~~ must be commenced within seven years of actual discovery of the violation.

SECTION 5. AMENDMENT. Subsection 1 of section 12.1-06.1-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The state, upon filing a civil action under section 12.1-06.1-05 or upon charging an offense included in the definition of racketeering if ~~such~~ the offense is committed as a part of a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03, may file a racketeering lien. A filing fee or other charge is not required for filing a racketeering lien.

SECTION 6. AMENDMENT. Subsections 1 and 2 of section 12.1-06.1-07 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. A custodian of the records of a financial institution shall, at no expense to the financial institution, produce for inspection or copying the records in the custody of the financial institution when requested to be inspected by the attorney general or a state's attorney authorized by the attorney general, ~~provided~~ if the person requesting the information signs and submits a sworn statement to the custodian that the request is made ~~in order~~ to investigate a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03. Records may be removed from the premises of the financial institution only for the purpose of copying the records and must be returned within forty-eight hours. The attorney general or an authorized state's attorney or any peace officer designated by an authorized state's attorney or the attorney general ~~is prohibited from using~~ may not use or releasing such ~~release the information except~~ in the proper discharge of official duties. The furnishing of records in

compliance with this section by a custodian of records is a bar to civil or criminal liability against the custodian or financial institution in any action brought alleging violation of the confidentiality of the records. The fact that records have been obtained may not be released in any way by the financial institution until ninety days after the release.

2. The attorney general or the authorized state's attorney may petition the district court for enforcement of this section ~~in the event of~~ upon noncompliance with the request for inspection. Enforcement ~~shall~~ must be granted if the request is reasonable and the attorney general or the authorized state's attorney has reasonable grounds to believe the records sought to be inspected are relevant to a civil or criminal investigation of a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03.

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 120

HOUSE BILL NO. 1373

(Representatives Mickelson, Carlisle, DeKrey)
(Senator B. Stenehjem)

FLEEING PEACE OFFICER PENALTY

AN ACT to create and enact a new section to chapter 12.1-08 of the North Dakota Century Code, relating to the penalty for fleeing a peace officer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-08 of the North Dakota Century Code is created and enacted as follows:

Fleeing a peace officer. Any person, other than the driver of a motor vehicle under section 39-10-71, who willfully fails or refuses to stop or who otherwise flees or attempts to elude, in any manner, a pursuing peace officer, when given a visual or audible signal to stop, is guilty of a class B misdemeanor for a first or second offense and a class A misdemeanor for a subsequent offense. A signal to stop complies with this section if the signal is perceptible to the person and:

1. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the vehicle is appropriately marked showing it to be an official law enforcement vehicle; or
2. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform and prominently displays the officer's badge of office.

Approved April 4, 1997
Filed April 4, 1997

CHAPTER 121**HOUSE BILL NO. 1178**

(Representatives Jacobs, Carlisle, Henegar, C. Johnsen)
(Senators Krauter, Urlacher)

ASSAULT OF EMERGENCY PERSONNEL

AN ACT to create and enact a new subsection to section 12.1-22-03 of the North Dakota Century Code, relating to criminal trespass; to amend and reenact subsection 2 of section 12.1-17-01 of the North Dakota Century Code, relating to assault of firefighters or emergency medical services personnel; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 12.1-17-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Simple assault is a class B misdemeanor except when the victim is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact, ~~or any~~ a person engaged in a judicial proceeding, or a member of a municipal or volunteer fire department or emergency medical services personnel unit or emergency department worker in the performance of the member's duties, in which case the offense is a class C felony.

SECTION 2. A new subsection to section 12.1-22-03 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

This section does not apply to a peace officer in the course of discharging the peace officer's official duties.

Approved March 19, 1997

Filed March 19, 1997

CHAPTER 122

SENATE BILL NO. 2364

(Senators Nalewaja, Mathern, Watne)
(Representatives Carlisle, R. Kelsch, Mahoney)

GROSS SEXUAL IMPOSITION SENTENCING

AN ACT to create and enact a new section to chapter 12.1-32 of the North Dakota Century Code, relating to the deferred imposition of sentence for gross sexual imposition; to amend and reenact subsection 3 of section 12.1-20-02, subsection 1 of section 12.1-20-05, and section 12.1-20-07 of the North Dakota Century Code, relating to the definition of a sexual act, corruption of a minor, and sexual assault; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 12.1-20-02 of the North Dakota Century Code is amended and reenacted as follows:

3. "Sexual act" means sexual contact between human beings consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, ~~or~~ the mouth and the vulva, or any other portion of the human body and the penis, anus, or vulva; or the use of an object which comes in contact with the victim's anus, vulva, or penis. For the purposes of this subsection, sexual contact between the penis and the vulva, ~~or between~~ the penis and the anus, any other portion of the human body and the anus or vulva, or an object and the anus, vulva, or penis of the victim, occurs upon penetration, however slight. Emission is not required.

SECTION 2. AMENDMENT. Subsection 1 of section 12.1-20-05 of the North Dakota Century Code is amended and reenacted as follows:

1. An adult who engages in a sexual act with another person or who causes another person to engage in a sexual act, is guilty of a class A misdemeanor if the other person is a minor, fifteen years of age or older, or is guilty of a class C felony if the adult is at least twenty-two years of age and the other person is a minor fifteen years of age or older.

² **SECTION 3. AMENDMENT.** Section 12.1-20-07 of the North Dakota Century Code is amended and reenacted as follows:

12.1-20-07. Sexual assault.

1. A person who knowingly has sexual contact with another person, or who causes ~~such other~~ another person to have sexual contact with ~~him~~ that person, is guilty of an offense if:

² Section 12.1-20-07 was also amended by section 2 of Senate Bill No. 2285, chapter 123.

- a. ~~He~~ That person knows or has reasonable cause to believe that the contact is offensive to the other person;
 - b. ~~He~~ That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders ~~him or her~~ that other person incapable of understanding the nature of ~~his or her~~ that other person's conduct;
 - c. ~~He~~ That person or someone with ~~his~~ that person's knowledge has substantially impaired the other person's power to appraise or control ~~his or her~~ that other person's conduct, by administering or employing without ~~the other's~~ that other person's knowledge intoxicants or other means for the purpose of preventing resistance;
 - d. The other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over ~~him or her~~ that other person;
 - e. The other person is a minor, fifteen years of age or older, and the actor is ~~his or her~~ the other person's parent, guardian, or is otherwise responsible for general supervision of the other person's welfare; or
 - f. The other person is a minor, fifteen years of age or older, and the actor is an adult.
2. The offense is a class ~~A misdemeanor~~ C felony if the actor's conduct violates subdivision b, c, or e of subsection 1, or subdivision f of subsection 1 if the adult is at least twenty-two years of age, otherwise the offense is a class A misdemeanor if the actor's conduct violates subdivision d of subsection 1 or subdivision f of subsection 1 if the adult is at least eighteen years of age and not twenty-two years of age or older, or a class B misdemeanor if the actor's conduct violates subdivision a of subsection 1.

SECTION 4. A new section to chapter 12.1-32 of the North Dakota Century Code is created and enacted as follows:

Gross sexual imposition - Deferred imposition of sentence. A person who violates subdivision d of subsection 1 or subdivision a of subsection 2 of section 12.1-20-03 may not receive a deferred imposition of sentence unless that person proves at sentencing by clear and convincing evidence that that person reasonably believed the victim to be fifteen years of age or older.

Approved April 1, 1997
Filed April 2, 1997

CHAPTER 123

SENATE BILL NO. 2285

(Senators W. Stenehjem, Nalewaja, Watne)
(Representatives Kliniske, Poolman, Stenehjem)

USE OF CONTROLLED SUBSTANCES IN SEX CRIME

AN ACT to amend and reenact subdivision b of subsection 1 of section 12.1-20-03, subdivision c of subsection 1 of section 12.1-20-07, subsection 6 of section 19-03.1-05, subsection 4 of section 19-03.1-07, and subsection 4 of section 19-03.1-11 of the North Dakota Century Code, relating to controlled substances in sex crimes and the categorizing of controlled substances.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision b of subsection 1 of section 12.1-20-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- b. ~~He~~ That person or someone with ~~his~~ that person's knowledge has substantially impaired the victim's power to appraise or control ~~his~~ ~~or her~~ the victim's conduct by administering or employing without ~~his~~ ~~or her~~ the victim's knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means with intent to prevent resistance;

³ **SECTION 2. AMENDMENT.** Subdivision c of subsection 1 of section 12.1-20-07 of the North Dakota Century Code is amended and reenacted as follows:

- c. ~~He~~ That person or someone with ~~his~~ that person's knowledge has substantially impaired the ~~other person's~~ victim's power to appraise or control ~~his~~ ~~or her~~ the victim's conduct, by administering or employing without the ~~other's~~ victim's knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means for the purpose of preventing resistance;

SECTION 3. AMENDMENT. Subsection 6 of section 19-03.1-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. Depressants. Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

³ Section 12.1-20-07 was also amended by section 3 of Senate Bill No. 2364, chapter 122.

- a. Flunitrazepam.
- b. Mecloqualone.
- ~~b.~~ c. Methaqualone.

SECTION 4. AMENDMENT. Subsection 4 of section 19-03.1-07 of the North Dakota Century Code is amended and reenacted as follows:

- 4. Opiates. Unless specifically excepted or unless in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrophan and levopropoxyphene excepted:
 - a. Alfentanil.
 - b. Alphaprodine.
 - c. Anileridine.
 - d. Bezitramide.
 - e. Bulk dextropropoxyphene (nondosage forms).
 - f. Carfentanil.
 - g. Dihydrocodeine.
 - h. Diphenoxylate.
 - i. Fentanyl.
 - j. Isomethadone.
 - k. Levomethorphan.
 - l. Levorphanol.
 - m. Metazocine.
 - n. Methadone.
 - o. Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.
 - p. Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid.
 - q. Pethidine (also known as meperidine).
 - r. Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
 - s. Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.

- t. Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
- u. Phenazocine.
- v. Priminodine.
- w. Racemethorphan.
- x. Racemorphan.
- y. Remifentanil.
- z. Sufentanil.

SECTION 5. AMENDMENT. Subsection 4 of section 19-03.1-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 4. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:
 - a. Alprazolam.
 - b. Barbital.
 - c. Bromazepam.
 - d. Camazepam.
 - e. Chloral betaine.
 - f. Chloral hydrate.
 - g. Chlordiazepoxide.
 - h. Clobazam.
 - i. Clonazepam.
 - j. Clorazepate.
 - k. Clotiazepam.
 - l. Cloxazolam.
 - m. Delorazepam.
 - n. Diazepam.
 - o. Estazolam.
 - p. Ethchlorvynol.

- q. Ethinamate.
- r. Ethyl loflazepate.
- s. Fludiazepam.
- t. ~~Flunitrazepam.~~
- ~~u.~~ Flurazepam.
- ~~v.~~ u. Halazepam.
- ~~w.~~ v. Haloxazolam.
- ~~x.~~ w. Ketazolam.
- ~~y.~~ x. Loprazolam.
- ~~z.~~ y. Lorazepam.
- ~~aa.~~ z. Lormetazepam.
- ~~bb.~~ aa. Mebutamate.
- ~~cc.~~ bb. Medazepam.
- ~~dd.~~ cc. Meprobamate.
- ~~ee.~~ dd. Methohexital.
- ~~ff.~~ ee. Methylphenobarbital (also known as mephobarbital).
- ~~gg.~~ ff. Midazolam.
- ~~hh.~~ gg. Nimetazepam.
- ~~ii.~~ hh. Nitrazepam.
- ~~jj.~~ ii. Nordiazepam.
- ~~kk.~~ jj. Oxazepam.
- ~~ll.~~ kk. Oxazolam.
- ~~mm.~~ ll. Paraldehyde.
- ~~nn.~~ mm. Petrichloral.
- ~~oo.~~ nn. Phenobarbital.
- ~~pp.~~ oo. Pinazepam.
- ~~qq.~~ pp. Prazepam.
- ~~rr.~~ qq. Quazepam.

~~ss.~~ rr. ~~Temazapem~~ Temazepam.

~~tt.~~ ss. Tetrazepam.

~~uu.~~ tt. Triazolam.

~~vv.~~ uu. Zolpidem.

Approved April 2, 1997

Filed April 3, 1997

CHAPTER 124

SENATE BILL NO. 2153

(Senators Watne, Nalewaja)
(Representatives Huether, R. Kelsch, Mahoney)

SEXUAL ABUSE OF MINORS

AN ACT to create and enact section 12.1-20-03.1 of the North Dakota Century Code, relating to sexual abuse of certain minors; to amend and reenact section 12-60-16.6, subsection 11 of section 12.1-32-02, subsection 3 of section 12.1-32-06.1, subsection 1 of section 12.1-32-15, subsection 6 of section 27-20-51, sections 31-04-04.1, and 31-13-03 of the North Dakota Century Code, relating to information, sentencing, and evidence; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-60-16.6 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-60-16.6. Criminal history record information - Dissemination to parties not described in section 12-60-16.5. Only the bureau may disseminate criminal history record information to parties not described in section 12-60-16.5. The dissemination may be made only if all the following requirements are met:

1. The information has not been purged or sealed.
2. The information is of a conviction, including a conviction for violating section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-06.1, or 12.1-20-11 notwithstanding any disposition following a deferred imposition of sentence; or the information is of a reportable event occurring within one year preceding the request.
3. The request is written and contains:
 - a. The name of the requester.
 - b. The name of the record subject.
 - c. At least two items of information used by the bureau to retrieve criminal history records, including:
 - (1) The fingerprints of the record subject.
 - (2) The state identification number assigned to the record subject by the bureau.
 - (3) The social security number of the record subject.
 - (4) The date of birth of the record subject.
 - (5) A specific reportable event identified by date and either agency or court.

4. The identifying information supporting a request for a criminal history record does not match the record of more than one individual.

SECTION 2. Section 12.1-20-03.1 of the North Dakota Century Code is created and enacted as follows:

12.1-20-03.1. Continuous sexual abuse of a child.

1. An individual in adult court is guilty of a class A felony if the individual engages in any combination of three or more sexual acts or sexual contacts with a minor under the age of fifteen years during a period of three or more months. The court may not defer imposition of sentence, nor may the court suspend any part of the specified sentence, either at the time of or after the imposition of the sentence, unless the court first finds that the offense was the defendant's first violation of this chapter and that extenuating or mitigating circumstances exist which justify a suspension. The court shall announce the circumstances that justify a suspension in open court when sentence is imposed and recite these circumstances in the sentence or order suspending part of the sentence.
2. If more than three sexual acts or contacts are alleged, a jury must unanimously agree that any combination of three or more acts or contacts occurred. The jury does not need to unanimously agree which three acts or contacts occurred.
3. No other felony offense under this chapter involving the same victim may be charged in the same proceeding with a charge under this section unless the other charged offense occurred outside the time period charged under this section or the other offense is charged in the alternative. A defendant may be charged with only one count under this section, but a separate count may be charged for each victim if more than one victim is involved.

⁴ **SECTION 3. AMENDMENT.** Subsection 11 of section 12.1-32-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11. Before sentencing a defendant on a felony charge under section 12.1-20-03, 12.1-20-03.1, 12.1-20-11, 12.1-27.2-02, 12.1-27.2-03, 12.1-27.2-04, or 12.1-27.2-05, a court shall order the department of corrections and rehabilitation to conduct a presentence investigation and to prepare a presentence report. In all felony or class A misdemeanor offenses, in which force, as defined in section 12.1-01-04, or threat of force is an element of the offense or in violation of section 12.1-22-02, or an attempt to commit the offenses, a court, unless a presentence investigation has been ordered, must receive a criminal record report before the sentencing of the defendant. Unless otherwise ordered by the court, the criminal record report must be conducted by the department of corrections and rehabilitation after consulting with the prosecuting attorney regarding the defendant's criminal record. The criminal record

⁴ Section 12.1-32-02 was also amended by section 2 of House Bill No. 1046, chapter 118.

report must be in writing, filed with the court before sentencing, and made a part of the court's record of the sentencing proceeding.

SECTION 4. AMENDMENT. Subsection 3 of section 12.1-32-06.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. If the defendant has plead or been found guilty of a felony sexual offense against a minor in violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, or 12.1-20-11, the court may impose an additional period of probation not to exceed five years if the additional period of probation is in conjunction with a commitment to a sexual offender treatment or aftercare program. If the defendant has plead or been found guilty of a misdemeanor sexual offense against a minor in violation of section 12.1-20-05, 12.1-20-06, or 12.1-20-07, the court may impose an additional period of probation not to exceed two years if the additional period of probation is in conjunction with a commitment to a sexual offender treatment or aftercare program.

⁵ **SECTION 5. AMENDMENT.** Subsection 1 of section 12.1-32-15 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. As used in this section:
 - a. "A crime against a child" means a violation of chapter 12.1-16, 12.1-17, 12.1-18, or 12.1-29 in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt to commit these offenses.
 - b. "Department" means the department of corrections and rehabilitation.
 - c. "Sexual offender" means a person who has pled guilty to or been found guilty of a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, 12.1-20-11, chapter 12.1-27.2, or an attempt to commit these offenses.

⁶ **SECTION 6. AMENDMENT.** Subsection 6 of section 27-20-51 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. Notwithstanding that juvenile court records are closed to the public, nothing in this section may be construed to limit the release of general information upon request not identifying the identity of any juvenile, witness, or victim in any proceeding under this chapter. However, upon a third adjudication of delinquency involving an offense which if

⁵ Section 12.1-32-15 was also amended by section 1 of House Bill No. 1048, chapter 136; section 1 of House Bill No. 1044, chapter 137; and section 2 of House Bill No. 1357, chapter 128.

⁶ Section 27-20-51 was also amended by section 2 of House Bill No. 1147, chapter 552, which was vetoed.

committed by an adult would constitute a felony and upon a second adjudication of delinquency involving an offense defined in ~~sections~~ section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, or 12.1-20-07, the name of the juvenile adjudicated delinquent may be disclosed.

SECTION 7. AMENDMENT. Section 31-04-04.1 of the North Dakota Century Code is amended and reenacted as follows:

31-04-04.1. Videotaped statement of child sexual offense victim - Criteria for admission as evidence.

1. In any prosecution for a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, or 12.1-20-11 in which the victim is less than fifteen years of age, the oral statement of the child victim may be recorded before trial and, subject to subsection 2, is admissible as evidence in any court proceeding regarding the offense if the following conditions are satisfied:
 - a. The court determines there is reasonable cause to believe that the child victim would experience serious emotional trauma as a result of in-court participation in the proceeding;
 - b. The accused must be given reasonable written notice of the time and place for taking the videotaped statement;
 - c. The accused must be afforded the opportunity to hear and view the testimony from outside the presence of the child by means of a two-way mirror or other similar method that will ensure that the child cannot hear or see the accused;
 - d. The accused must have the opportunity to communicate orally with counsel by electronic means while the videotaped statement is being made; and
 - e. All questioning must be done by the prosecutor or counsel for the defendant unless the defendant is an attorney pro se. An attorney pro se must conduct all questioning from outside the presence of the child. Upon request of any of the parties or upon the determination of the court that it would be appropriate, the court may appoint a person who is qualified as an expert and who has dealt with the child in a therapeutic setting to aid the court throughout proceedings conducted under this section and the court may appoint a guardian ad litem to protect the interests of the child.
2. A child victim's videotaped statement is admissible pursuant to subsection 1 if the court finds that the child is unavailable as a witness to testify at trial and, upon viewing the videotape recording before it is shown to the jury, determines that it is sufficiently reliable and trustworthy and that the interests of justice will best be served by admission of the statement into evidence. For purposes of this subsection, "unavailable" includes a determination, based on medical or psychological evidence or expert testimony, that the child would suffer serious emotional or psychological strain if required to testify at trial. The court, in making its findings and determinations under this subsection, shall consider at least the following:

- a. The nature of the offense;
- b. The significance of the child's testimony to the case;
- c. The child's age;
- d. The child's psychological maturity and understanding; and
- e. The nature, degree, and duration of potential injury to the child from testifying.

SECTION 8. AMENDMENT. Section 31-13-03 of the North Dakota Century Code is amended and reenacted as follows:

31-13-03. Persons to be tested - Costs. The court shall order any person convicted on or after August 1, 1995, of any sexual offense or attempted sexual offense in violation of sections 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, subdivision e or f of subsection 1 of section 12.1-20-07, or section 12.1-20-11 or any other offense when the court finds at sentencing that the person engaged in a nonconsensual sexual act or sexual contact with another person during, in the course of, or as a result of, the offense and any person who is in the custody of the department on or after August 1, 1995, as a result of a conviction of one of these offenses to have a sample of blood and other body fluids taken by the department for DNA law enforcement identification purposes and inclusion in law enforcement identification data bases. Notwithstanding any other provision of law, if the sentencing court has not previously ordered a sample of blood and other body fluids to be taken, the court retains jurisdiction and authority to enter an order that the convicted person provide a sample of blood and other body fluids as required by this section. Any person convicted on or after August 1, 1995, who is not sentenced to a term of confinement shall provide a sample of blood and other body fluids as a condition of the sentence or probation at a time and place specified by the sentencing court. The cost of the procedure must be assessed to the person being tested.

Approved April 10, 1997
Filed April 10, 1997

CHAPTER 125

SENATE BILL NO. 2168

(Senators W. Stenehjem, C. Nelson, Traynor)
(Representatives Kretschmar, Mahoney, Stenehjem)

DIVORCE PROCEEDINGS TESTIMONY

AN ACT to create and enact a new subsection to section 12.1-20-09 of the North Dakota Century Code, relating to testimony in divorce proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 12.1-20-09 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

The court shall grant immunity from prosecution under this section to a person subject to prosecution under this section who, as part of a divorce, annulment, or separation proceeding, provides information regarding sexual acts with another person.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 126

HOUSE BILL NO. 1387 (Representatives Svedjan, Price)

PUBLIC SEXUAL ACTS FACILITATION PROHIBITED

AN ACT to create and enact a new section to chapter 12.1-20 of the North Dakota Century Code, relating to prohibiting the facilitation of sexual acts in public; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-20 of the North Dakota Century Code is created and enacted as follows:

Facilitation of sexual acts in public.

1. As used in this section:
 - a. "Adult entertainment center" means any commercial facility at which motion pictures or videos that include explicit representations of sexual conduct are offered for viewing at that facility, but does not include the guest rooms of a hotel or motel.
 - b. "Sexual act" has the meaning prescribed in section 12.1-20-02.
 - c. "Sexual conduct" has the meaning prescribed in section 12.1-27.1-01.
2. It is an infraction for a person to willfully own, rent, lease, manage, or exercise control of any portion of an adult entertainment center if that portion contains:
 - a. Any partition between subdivisions of a room or area that has an opening that facilitates a sexual act between individuals on either side of the partition; or
 - b. A room, booth, stall, or partitioned portion of a room offered to individuals for a fee as an incident to viewing a video, motion picture, or similar entertainment, unless the room, booth, stall, or partitioned portion of the room has:
 - (1) At least one side open to an adjacent public space so that the area inside is visible to individuals in the adjacent public space; and
 - (2) The viewing area is lighted in a manner that the persons in that area are visible from the adjacent public space.
3. This section does not apply to an enclosure that is a private office space used by the owner, manager, or employees of the adult entertainment center if that office space is not held out or available to the public for the

purpose of viewing a video, motion picture, or similar entertainment for a fee.

4. The department of health or the state's attorney having jurisdiction may bring an action to enjoin a pattern of violations of this section.

Approved April 8, 1997

Filed April 8, 1997

CHAPTER 127**HOUSE BILL NO. 1350**

(Representatives Nichols, Mahoney, Maragos, Carlisle)
(Senators Nalewaja, Robinson)

CRIMINAL MISCHIEF OFFENSE CLASSIFICATION

AN ACT to amend and reenact section 12.1-21-05 of the North Dakota Century Code, relating to classification of criminal mischief offenses; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-21-05 of the North Dakota Century Code is amended and reenacted as follows:

12.1-21-05. Criminal mischief.

1. A person is guilty of an offense if ~~he~~ that person:
 - a. Willfully tampers with tangible property of another so as to endanger person or property; or
 - b. Willfully damages tangible property of another.
2. The offense is:
 - a. A class ~~C~~ B felony if the actor intentionally causes pecuniary loss in excess of ~~two ten thousand dollars or damages tangible property of another by means of an explosive or a destructive device.~~
 - b. A class C felony if the actor intentionally causes pecuniary loss in excess of two thousand dollars but not in excess of ten thousand dollars or damages tangible property of another by means of an explosive or a destructive device.
 - c. A class A misdemeanor if the actor recklessly causes pecuniary loss in excess of two thousand dollars or if the actor intentionally causes pecuniary loss of from one hundred dollars through two thousand dollars.

Otherwise the offense is a class B misdemeanor.

Approved April 1, 1997
Filed April 2, 1997

CHAPTER 128

HOUSE BILL NO. 1357

(Representatives Fairfield, Delmore, Kliniske, Stenehjem)
(Senator Heitkamp)

SURREPTITIOUS INTRUSION

AN ACT to prohibit surreptitious intrusion; to amend and reenact subdivision c of subsection 1 of section 12.1-32-15 of the North Dakota Century Code, relating to sexual offenders; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Surreptitious intrusion.

1. An individual, with the intent to arouse, appeal to, or gratify that individual's lust, passions, or sexual desires, is guilty of a class A misdemeanor if that individual does any of the following:
 - a. With intent to intrude upon or interfere with the privacy of another, enters upon another's property and surreptitiously gazes, stares, or peeps in the window or any other aperture of a house or place of dwelling of another.
 - b. With intent to intrude upon or interfere with the privacy of another, enters upon another's property and surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or any other aperture of a house or place of dwelling of another.
 - c. With intent to intrude upon or interfere with the privacy of the occupant, surreptitiously gazes, stares, or peeps in the window or other aperture of a sleeping room in a hotel, a tanning booth, or other place where a reasonable individual would have an expectation of privacy and has exposed or is likely to expose that individual's intimate parts, or has removed the clothing covering the immediate area of the intimate parts.
 - d. With intent to intrude upon or interfere with the privacy of the occupant, surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or other aperture of a sleeping room in a hotel, a tanning booth, or other place where a reasonable individual would have an expectation of privacy and has exposed or is likely to expose that individual's intimate parts, or has removed the clothing covering the immediate area of the intimate parts.
2. A person is guilty of a class C felony if the person violates subsection 1 after a previous conviction for violating subsection 1 or if the person violates subsection 1 after being required to register under section 12.1-32-15.

⁷ **SECTION 2. AMENDMENT.** Subdivision c of subsection 1 of section 12.1-32-15 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- c. "Sexual offender" means a person who has pled guilty to or been found guilty of a violation of section 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, 12.1-20-11, chapter 12.1-27.2, subsection 2 of section 1 of this Act, or an attempt to commit these offenses.

Approved April 10, 1997
Filed April 10, 1997

⁷ Section 12.1-32-15 was also amended by section 1 of House Bill No. 1048, chapter 136; section 1 of House Bill No. 1044, chapter 137; and section 5 of Senate Bill No. 2153, chapter 124.

CHAPTER 129**HOUSE BILL NO. 1079**

(Representatives Carlisle, DeKrey, Klein, Martinson)
(Senators Robinson, Nalewaja)

DISARMING LAW ENFORCEMENT OFFICER

AN ACT to create and enact a new section to chapter 12.1-23 of the North Dakota Century Code, relating to the penalty for unauthorized use of a law enforcement officer's firearm.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-23 of the North Dakota Century Code is created and enacted as follows:

Disarming or attempting to disarm a law enforcement officer. Notwithstanding subdivision d of subsection 2 of section 12.1-23-05, a person is guilty of a class C felony if, without the consent of the law enforcement officer, the person willfully takes or removes, or attempts to take or remove, a firearm from a law enforcement officer engaged in the performance of official duties.

Approved March 25, 1997
Filed March 26, 1997

CHAPTER 130

HOUSE BILL NO. 1112

(Representatives Brown, Martin, Wald)
(Senators Urlacher, Goetz)

VULNERABLE ELDERLY ADULT EXPLOITATION

AN ACT to create and enact two new sections to chapter 12.1-31 of the North Dakota Century Code, relating to the exploitation of a disabled or vulnerable elderly adult; to amend and reenact section 12.1-31-07 of the North Dakota Century Code, relating to the definition of disabled or vulnerable elderly adult; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-31-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-31-07. Endangering a vulnerable elderly adult - Penalty.

1. In this ~~section~~ chapter, unless the context otherwise requires:
 - a. "Caregiver" means a person who is responsible for the care of a disabled adult or vulnerable elderly adult as a result of a familial or legal relationship, or a person who has assumed responsibility for the care of a disabled adult or vulnerable elderly adult. The term does not include a licensed health care provider who is acting within the provider's legal scope of practice in providing appropriate care or assistance to a disabled adult or vulnerable elderly adult who is the patient or client of the licensed health care provider.
 - b. "Disabled adult" means a person eighteen years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability or organic brain damage or mental illness or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.
 - c. "Vulnerable elderly adult" means a person sixty years of age or older who is suffering from a disease or infirmity associated with advanced age and manifested by physical, mental, or emotional dysfunctioning to the extent that the person is incapable of adequately providing for the person's own health or personal care.
2. Except as provided for by chapters 23-06.4, 23-06.5, and 30.1-30, a caregiver who knowingly performs an act that causes a disabled adult's or vulnerable elderly adult's life to be endangered, health to be injured, or preexisting physical or mental condition to deteriorate, or a caregiver who fails to perform acts that the caregiver knows are necessary to maintain or preserve the life or health of the disabled adult or vulnerable elderly adult and the failure causes the disabled adult's or vulnerable elderly adult's life to be endangered, health to be injured, or preexisting

physical or mental condition to deteriorate, is guilty of a class ~~C~~ B felony.

SECTION 2. Two new sections to chapter 12.1-31 of the North Dakota Century Code are created and enacted as follows:

Exploitation of a vulnerable adult - Penalty.

1. A person is guilty of exploitation of a disabled adult or vulnerable elderly adult if:
 - a. The person stands in a position of trust and confidence or has a business relationship with the disabled adult or vulnerable elderly adult and knowingly, by deception or intimidation, obtains or uses, or attempts to obtain or use, the disabled adult's or vulnerable elderly adult's funds, assets, or property with the intent to temporarily or permanently deprive the disabled adult or vulnerable elderly adult of the use, benefit, or possession of the property, for the benefit of someone other than the disabled adult or vulnerable elderly adult; or
 - b. The person knows that the disabled adult or vulnerable elderly adult lacks the capacity to consent, and obtains or uses, or attempts to obtain or use, or assists another in obtaining or using or attempting to obtain or use, the disabled adult's or vulnerable elderly adult's funds, assets, or property with the intent to temporarily or permanently deprive the disabled adult or vulnerable elderly adult of the use, benefit, or possession of the property for the benefit of someone other than the disabled adult or vulnerable elderly adult.
2. Exploitation of a disabled adult or vulnerable elderly adult is:
 - a. A class A felony if the value of the exploited funds, assets, or property exceeds one hundred thousand dollars.
 - b. A class B felony if the value of the exploited funds, assets, or property exceeds twenty thousand dollars but does not exceed one hundred thousand dollars.
 - c. A class C felony if the value of the exploited funds, assets, or property is in excess of one thousand dollars but does not exceed twenty thousand dollars.
3. It is not a defense to a prosecution of a violation of this section that the accused did not know the age of the victim.
4. This section does not impose criminal liability on a person who has:
 - a. Managed the disabled adult's or vulnerable elderly adult's funds, assets, or property in a manner that clearly gives primacy to the needs and welfare of that person or is consistent with any explicit written authorization; or

- b. Made a good faith effort to assist in the management of the disabled adult's or vulnerable elderly adult's funds, assets, or property.

Criminal proceeding involving a vulnerable adult - Speedy trial. In a criminal proceeding in which a disabled adult or vulnerable elderly adult is a victim, the court and state's attorney shall take appropriate action to ensure a speedy trial to minimize the length of time the disabled adult or vulnerable elderly adult must endure the stress of involvement in the proceedings. In ruling on any motion or other request for a delay or a continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of the disabled adult or vulnerable elderly adult.

Approved April 10, 1997
Filed April 11, 1997

CHAPTER 131

HOUSE BILL NO. 1180

(Representatives Carlisle, R. Kelsch, Mahoney)
(Senators Nalewaja, W. Stenehjem, Tallackson)

METHAMPHETAMINE POSSESSION PENALTY

AN ACT to amend and reenact sections 12.1-31.1-03, 12.1-31.1-04, and subdivision a of subsection 1 of section 19-03.1-23 of the North Dakota Century Code, relating to unlawful possession, manufacture, or delivery of drug paraphernalia and methamphetamine; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-31.1-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-31.1-03. Unlawful possession of drug paraphernalia. It shall be unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of chapter 19-03.1. Any person violating this section is guilty of a class C felony if the drug paraphernalia is used, or possessed with intent to be used, to manufacture, compound, convert, produce, process, prepare, test, or analyze a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19-03.1. Otherwise, a violation of this section is a class A misdemeanor.

SECTION 2. AMENDMENT. Section 12.1-31.1-04 of the North Dakota Century Code is amended and reenacted as follows:

12.1-31.1-04. Unlawful manufacture or delivery of drug paraphernalia. It shall be unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of chapter 19-03.1. Any person violating this section is guilty of a class C felony if the drug paraphernalia will be used to manufacture, compound, convert, produce, process, prepare, test, or analyze a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19-03.1. Otherwise, a violation of this section is a class A misdemeanor.

⁸ **SECTION 3. AMENDMENT.** Subdivision a of subsection 1 of section 19-03.1-23 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

⁸ Section 19-03.1-23 was also amended by section 1 of House Bill No. 1359, chapter 205.

- a. A controlled substance classified in schedule I or II which is a narcotic drug, or methamphetamine, is guilty of a class A felony and must be sentenced:
- (1) For a first offense, to imprisonment for at least a year and a day.
 - (2) For a second offense, to imprisonment for at least five years.
 - (3) For a third or subsequent offense, to imprisonment for twenty years.

Approved March 19, 1997

Filed March 19, 1997

CHAPTER 132

HOUSE BILL NO. 1195

(Representatives Stenehjem, Wentz, Delmore)
(Senators Heitkamp, Thane, Watne)

MISDEMEANOR MONETARY PENALTY AMOUNTS

AN ACT to amend and reenact subsections 5 and 6 of section 12.1-32-01, subsection 1 of section 27-09.1-07, sections 40-05-06, and 40-18-14 of the North Dakota Century Code, relating to misdemeanor monetary penalties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 5 and 6 of section 12.1-32-01 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

5. Class A misdemeanor, for which a maximum penalty of one year's imprisonment, a fine of ~~one~~ two thousand dollars, or both, may be imposed.
6. Class B misdemeanor, for which a maximum penalty of thirty days' imprisonment, a fine of ~~five hundred~~ one thousand dollars, or both, may be imposed.

SECTION 2. AMENDMENT. Subsection 1 of section 27-09.1-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. From time to time and in a manner prescribed by the court, the clerk shall mail to the prospective juror a qualification form accompanied by instructions to fill out and return the form by mail to the clerk within ten days after its receipt. The juror qualification form must be approved by the state court administrator as to matters of form and must elicit the name, address of residence, and age of the prospective juror and whether the prospective juror:
 - a. Is a citizen of the United States and a resident of the county;
 - b. Is able with reasonable accommodation to communicate and understand the English language;
 - c. Has any physical or mental disability that may require reasonable accommodation to render satisfactory jury service; and
 - d. Has lost the right to vote because of imprisonment resulting from conviction of a felony (section 27-09.1-08).

The juror qualification form must contain the prospective juror's declaration that the responses are true to the best of the prospective juror's knowledge and the prospective juror's acknowledgment that a willful misrepresentation of a material fact may be punished by a fine of not more than ~~five hundred~~ one thousand dollars or imprisonment in

the county jail for not more than thirty days, or both. Notarization of the juror qualification form is not required. If the prospective juror is unable to fill out the form, another person may do it for the prospective juror and shall indicate that fact and the reason therefor. If it appears there is an omission, ambiguity, or error in a returned form, the clerk shall again send the form with instructions to the prospective juror to make the necessary addition, clarification, or correction and to return the form to the clerk within ten days after its second receipt.

SECTION 3. AMENDMENT. Section 40-05-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-05-06. City fines and penalties limited.

1. Except as provided in subsections 2 and 3, the fine or penalty for the violation of any ordinance, resolution, or regulation of a city may not exceed ~~five hundred~~ one thousand dollars, and the imprisonment may not exceed thirty days for one offense.
2. For every violation of a city ordinance regulating the operation or equipment of motor vehicles or regulating traffic, except those ordinances listed in section 39-06.1-05, a fee may be established, by ordinance, which ~~shall~~ may not exceed the limits, for equivalent categories of violations, set forth in section 39-06.1-06.
3. For every violation of a city ordinance enforcing the requirements of 40 CFR 403 relating to publicly owned treatment works, or prohibiting shoplifting, vandalism, criminal mischief, or malicious mischief, the penalty may not exceed a fine of one thousand dollars, imprisonment for thirty days, or both such fine and imprisonment.

This section does not prohibit the ~~utilization~~ use of the sentencing alternatives, other than a fine or imprisonment, provided by section 12.1-32-02 for the violation of a city ordinance, nor does this section limit the use of deferred or suspended sentences under subsections 3 and 4 of section 12.1-32-02.

SECTION 4. AMENDMENT. Section 40-18-14 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-18-14. Municipal judge may enforce orders and judgments and punish for contempt. A municipal judge has the power to enforce due obedience to the court's orders and judgments. The judge may fine or imprison for contempt committed in the judge's presence while holding court, as well as for contempt of process issued, and of orders made by the judge. When an act or omission constituting a contempt in a municipal court is not committed in the presence of the municipal judge, an affidavit alleging the facts may be filed and a warrant of arrest thereupon may issue on which the person accused may be arrested and brought before the municipal judge immediately. The person must be given a reasonable opportunity to employ counsel and defend against the alleged contempt. After hearing the allegations and proofs, the municipal judge may discharge the person or adjudge the person guilty and may punish by fine or imprisonment or both. The fine in any case may not be more than ~~five hundred~~ one thousand dollars and the imprisonment may not be more than thirty days.

Approved March 25, 1997
Filed March 26, 1997

CHAPTER 133

SENATE BILL NO. 2220

(Senator W. Stenehjem)

PROBATION SUPERVISION AND INDIGENT DEFENSE COSTS REIMBURSEMENT

AN ACT to amend and reenact sections 12.1-32-07 and 12.1-32-08 of the North Dakota Century Code, relating to supervision of probationers, restitution, and reimbursement of indigent defense costs from offenders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-32-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-32-07. Supervision of probationer - Conditions of probation - Revocation.

1. When the court imposes probation upon conviction for a felony, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. In class A misdemeanor cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party ~~selected by the court~~. In all other cases, the court may place the defendant under the supervision and management of a ~~responsible party selected by the court~~ community corrections program other than the department of corrections and rehabilitation. If an appropriate community corrections program is not reasonably available, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. The department of corrections and rehabilitation may arrange for the supervision and management of the defendant by a community corrections program selected by the department of corrections and rehabilitation. A community corrections program means a program for the supervision of a defendant, including monitoring and enforcement of terms and conditions of probation set by the court or pursuant to a conditional release from the physical custody of a correctional facility or the department of corrections and rehabilitation.
2. The conditions of probation must be such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law-abiding life or to assist the defendant to do so. The court shall provide as an explicit condition of every probation that the defendant not commit another offense during the period for which the probation remains subject to revocation. The court shall order supervision costs and fees of not less than thirty dollars per month unless the court makes a specific finding on record that the imposition of fees will result in an undue hardship.

3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation.

Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:

- a. Community service;
 - b. Day reporting;
 - c. Curfew;
 - d. Home confinement;
 - e. House arrest;
 - f. Electronic monitoring;
 - g. Residential halfway house; or
 - h. Intensive supervision program.
4. When imposing a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the court may impose such conditions as it deems appropriate, and may include any one or more of the following:
 - a. Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip the defendant for suitable employment.
 - b. Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
 - c. Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.
 - d. Support the defendant's dependents and meet other family responsibilities.
 - e. Make restitution or reparation to the victim of the defendant's conduct for the damage or injury which was sustained, or perform other reasonable assigned work. When restitution, reparation, or assigned work is a condition of probation, the court shall proceed as provided in subsection 1 or 2, as applicable, of section 12.1-32-08.
 - f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05, except when imposition of sentence is deferred.
 - g. Refrain from excessive use of alcohol, or any use of narcotics or of another dangerous or abusable drug without a prescription.

- h. Permit the probation officer to visit the defendant at reasonable times at the defendant's home or elsewhere.
 - i. Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer.
 - j. Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment.
 - k. Report to a probation officer at reasonable times as directed by the court or the probation officer.
 - l. Submit to a medical examination or other reasonable testing for the purpose of determining the defendant's use of narcotics, marijuana, or other controlled substance whenever required by a probation officer.
 - m. Refrain from associating with known users or traffickers in narcotics, marijuana, or other controlled substances.
 - n. Submit the defendant's person, place of residence, or vehicle to search and seizure by a probation officer at any time of the day or night, with or without a search warrant.
 - o. Serve a term of imprisonment of up to one-half of the maximum term authorized for the offense of which the defendant was convicted or one year, whichever is less.
 - p. Reimburse the costs and expenses determined necessary for the defendant's adequate defense when counsel is appointed for the defendant. When reimbursement of indigent defense costs and expenses is imposed as a condition of probation, the court shall proceed as provided in subsection 3 of section 12.1-32-08.
 - q. Provide community service for the number of hours designated by the court.
5. When the court imposes a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the defendant must be given a certificate explicitly setting forth the conditions on which the defendant is being released.
6. The court, upon notice to the probationer and with good cause, may modify or enlarge the conditions of probation at any time prior to the expiration or termination of the period for which the probation remains conditional. If the defendant violates a condition of probation at any time before the expiration or termination of the period, the court may continue the defendant on the existing probation, with or without modifying or enlarging the conditions, or may revoke the probation and impose any other sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of initial sentencing or deferment. In the case of suspended execution of sentence, the court may revoke the probation and cause the defendant to suffer the penalty of the sentence previously imposed upon the defendant.

7. The court may continue or modify probation conditions or revoke probation for a violation of probation conditions occurring before the expiration or termination of the period of probation notwithstanding that the order of the court is imposed after the expiration or termination has occurred. The petition for revocation must be issued within sixty days of the expiration or termination of probation.
8. Jurisdiction over a probationer may be transferred from the court that imposed the sentence to another court of this state, with the concurrence of both courts. Retransfers of jurisdiction may also occur in the same manner. The court to which jurisdiction has been transferred under this subsection may exercise all powers permissible under this chapter over the defendant.

⁹ **SECTION 2. AMENDMENT.** Section 12.1-32-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-32-08. Hearing prior to ordering restitution, reparation, or reimbursement of indigent defense costs and expenses - Conditions.

1. Prior to imposing restitution or reparation as a sentence or condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney and to the defendant as to the nature and amount thereof. The court, when sentencing a person adjudged guilty of criminal activities which have resulted in pecuniary damages, in addition to any other sentence it may impose, shall order that the defendant make restitution to the victim or other recipient as determined by the court, unless the court states on the record, based upon the criteria in this subsection, the reason it does not order restitution or orders only partial restitution. In determining whether to order restitution the court shall take into account:
 - a. The reasonable damages sustained by the victim or victims of the criminal offense, which damages must be limited to those directly related to the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action. This can include an amount equal to the cost of necessary and related professional services and devices relating to physical, psychiatric, and psychological care. The defendant may be required as part of the sentence imposed by the court to pay the prescribed treatment costs for a victim of a sexual offense as defined in chapters 12.1-20 and 12.1-27.2.
 - b. The ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations, or to otherwise take action to restore the victim's property.
 - c. The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitational purpose in the case of the particular offender considered.

⁹ Section 12.1-32-08 was also amended by section 1 of House Bill No. 1109, chapter 134.

The court shall fix the amount of restitution or reparation, which may not exceed an amount the defendant can or will be able to pay, and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. The court may order restitution be paid to the division of parole and probation for any benefits it has paid or may pay under chapter 54-23.4. Any payments made pursuant to such order must be deducted from damages awarded in a civil action arising from the same incident. An order that a defendant make restitution or reparation as a sentence or condition of probation ~~must~~ may, unless the court directs otherwise, be filed, transcribed, and enforced by the person entitled to the restitution or reparation in the same manner as civil judgments rendered by the courts of this state may be enforced.

2. The court may order the defendant to perform reasonable assigned work as a condition of probation, which assigned work need not be related to the offense charged, but must not be solely for the benefit of a private individual other than the victim.
3.
 - a. Prior to imposing reimbursement of indigent defense costs and expenses as a condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney, the defendant, and the defendant's probation officer concerning the nature and amount of costs and expenses to be reimbursed. It is a rebuttable presumption that reasonable reimbursement of costs and expenses consists of fifty dollars per hour for appointed counsel services plus reasonable expenses. The court may not impose reimbursement of indigent defense costs and expenses as a condition of probation unless the court finds the defendant is or may be able to pay them. In determining the amount and method of reimbursement, the court shall consider the financial resources of the defendant and the nature of the burden that reimbursement of costs and expenses will impose.
 - b. A defendant who is required to reimburse indigent defense costs and expenses as a condition of probation and who is not willfully in default in that reimbursement may at any time petition the court that imposed the condition to waive reimbursement of all or any portion of the costs and expenses. If the court is satisfied that reimbursement of the amount due will impose undue hardship on the defendant or the defendant's immediate family, the court may waive reimbursement of all or any portion of the amount due or modify the method of payment.
 - c. If at any time the court finds that the defendant is able to reimburse costs and expenses and has willfully failed to do so, the court may continue, modify, or enlarge the conditions of probation or revoke probation as provided in subsection 5 or 6, as applicable, of section 12.1-32-07.

4. If the court finds that the defendant is unable to pay a fine, supervision fee, reimbursement for indigent defense costs and expenses, or restitution or reparations, the court may order the defendant to perform reasonable assigned work in lieu of all or of part of a fine, a supervision fee, reimbursement for indigent defense costs and expenses, or restitution or reparations. The defendant may not perform reasonable assigned work in lieu of restitution or reparations unless the person entitled to restitution or reparations has consented in writing or on the record.

Approved March 21, 1997
Filed March 21, 1997

CHAPTER 134

HOUSE BILL NO. 1109

(Judiciary Committee)

(At the request of the Supreme Court)

INDIGENT DEFENSE COSTS REIMBURSEMENT

AN ACT to amend and reenact subsection 3 of section 12.1-32-08 and subsection 2 of section 29-07-01.1 of the North Dakota Century Code, relating to reimbursement of indigent defense costs and expenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁰ **SECTION 1. AMENDMENT.** Subsection 3 of section 12.1-32-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. a. ~~Prior to imposing reimbursement of~~ Under section 12.1-32-07, the court may order that the defendant reimburse indigent defense costs and expenses as a condition of probation; the. The court shall hold a hearing on the matter with notice to the prosecuting attorney, notify the defendant, and the defendant's probation officer concerning the nature, and the prosecuting attorney of the amount of costs and expenses to be reimbursed and of the defendant's right to a hearing on the reimbursement amount. It is a rebuttable presumption that reasonable reimbursement of costs and expenses consists of ~~fifty~~ seventy-five dollars per hour for appointed counsel services plus reasonable expenses. ~~The court may not impose reimbursement of indigent defense costs and expenses as a condition of probation unless the court finds the defendant is or may be able to pay them.~~ If the defendant requests a hearing within thirty days of receiving notice under this subdivision, the court shall schedule a hearing at which the basis for the amount to be reimbursed must be demonstrated. In determining the amount and method of reimbursement, the court shall consider the financial resources of the defendant and the nature of the burden that reimbursement of costs and expenses will impose.
- b. A defendant who is required to reimburse indigent defense costs and expenses as a condition of probation and who is not willfully in default in that reimbursement may at any time petition the court that imposed the condition to waive reimbursement of all or any portion of the costs and expenses. If the court is satisfied that reimbursement of the amount due will impose undue hardship on the defendant or the defendant's immediate family, the court may waive reimbursement of all or any portion of the amount due or modify the method of payment.

¹⁰ Section 12.1-32-08 was also amended by section 2 of Senate Bill No. 2220, chapter 133.

- c. If at any time the court finds that the defendant is able to reimburse costs and expenses and has willfully failed to do so, the court may continue, modify, or enlarge the conditions of probation or revoke probation as provided in subsection ~~5 or 6~~ or 7, as applicable, of section 12.1-32-07.

SECTION 2. AMENDMENT. Subsection 2 of section 29-07-01.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A defendant with appointed counsel, subject to subdivisions a through c of this subsection, shall reimburse the state or city such sums as the state or city expends on the defendant's behalf.
 - a. At the time counsel is appointed for a defendant, the appointing court shall advise the defendant of the defendant's potential obligation to reimburse the appropriate governmental entity the amounts expended on behalf of the defendant.
 - b. Within ninety days after its judgment of conviction or after conclusion of an appeal of its initial judgment of conviction, the court that appointed counsel for the defendant shall notify the defendant and the prosecuting attorney of the amount of indigent defense costs and expenses the defendant is obligated to reimburse if able to do so and of the defendant's right to a hearing on the reimbursement amount. It is a rebuttable presumption that reasonable reimbursement of costs and expenses consists of ~~fifty~~ seventy-five dollars per hour for appointed counsel services plus reasonable expenses. ~~Following receipt of~~ If the defendant requests a hearing within thirty days of receiving notice under this subdivision, the defendant is entitled to court shall schedule a hearing at which the basis for the amount to be reimbursed must be demonstrated. In determining the amount of reimbursement and method of payment, the court shall consider the financial resources of the defendant and the nature of the burden that reimbursement of costs and expenses will impose.
 - c. A defendant who is required to reimburse indigent defense costs and expenses and who is not willfully in default in that reimbursement may at any time petition the court to waive reimbursement of all or any portion of the costs and expenses. If the court is satisfied that reimbursement of the amount due will impose undue hardship on the defendant or the defendant's immediate family, the court may waive reimbursement of all or any portion of the amount due or modify the method of payment.

Approved March 25, 1997
Filed March 26, 1997

CHAPTER 135

HOUSE BILL NO. 1089

(Representative Carlisle)

VIOLENT OFFENDER SENTENCING

AN ACT to amend and reenact section 12.1-32-09.1 of the North Dakota Century Code, relating to sentencing of violent offenders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-32-09.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-32-09.1. Sentencing of violent offenders. Any offender who is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, 12.1-17-02, 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the offenses, and who receives a sentence of imprisonment is not eligible for release from confinement on any basis until eighty-five percent of the sentence imposed by the court has been served or the sentence is commuted. In the case of an offender who is sentenced to a term of life imprisonment with opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence imposed" means the remaining life expectancy of the offender on the date of sentencing. The remaining life expectancy of the offender must be calculated on the date of sentencing, computed by reference to a recognized mortality table as established by rule by the supreme court. Notwithstanding this section, an offender sentenced under subsection 1 of section 12.1-32-01 may not be eligible for parole until the requirements of that subsection have been met.

Approved March 27, 1997

Filed March 27, 1997

CHAPTER 136

HOUSE BILL NO. 1048

(Legislative Council)
(Criminal Justice Committee)
(Representatives Brown, Bernstein, Kliniske, Mahoney)
(Senators W. Stenehjem, Nalewaja)

SEXUALLY VIOLENT PREDATOR REGISTRATION

AN ACT to create and enact a new subsection to section 50-06-05.1 of the North Dakota Century Code, relating to the powers and duties of the department of human services; and to amend and reenact section 12.1-32-15 of the North Dakota Century Code, relating to registration of sexually violent predators.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹ **SECTION 1. AMENDMENT.** Section 12.1-32-15 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-32-15. Offenders against children and sexual offenders - Sexually violent predators - Registration requirement - Penalty.

1. As used in this section:
 - a. "A crime against a child" means a violation of chapter 12.1-16, 12.1-17, 12.1-18, or 12.1-29 in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt to commit these offenses.
 - b. "Department" means the department of corrections and rehabilitation.
 - c. "Mental abnormality" means a congenital or acquired condition of an individual that affects the emotional or volitional capacity of the individual in a manner that predisposes that individual to the commission of criminal sexual acts to a degree that makes the individual a menace to the health and safety of other individuals.
 - d. "Predatory" means an act directed at a stranger, or at an individual with whom a relationship has been established or promoted for the primary purpose of victimization.
 - e. "Qualified board" means two or more experts in the field of behavior and treatment of sexual offenders as determined by the department of human services.

¹¹ Section 12.1-32-15 was also amended by section 1 of House Bill No. 1044, chapter 137; section 5 of Senate Bill No. 2153, chapter 124; and section 2 of House Bill No. 1357, chapter 128.

- f. "Sexual offender" means a person who has pled guilty to or been found guilty of a violation of section 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, 12.1-20-11, chapter 12.1-27.2, or an attempt to commit these offenses.
- g. "Sexually violent predator" means a sexual offender who suffers from a mental abnormality or personality disorder that makes that offender likely to engage in predatory sexually violent offenses.
2. After a person has pled guilty or been found guilty as a sexual offender, the court shall determine upon the motion of the state's attorney and after receiving a report from the qualified board if that person is a sexually violent predator. The court may order the defendant to undergo an evaluation to enable the qualified board to make an appropriate determination.
3. After a person has pled guilty to or been found guilty of a crime against a child or an attempted crime against a child, or after a person has pled guilty or been found guilty as a sexual offender, the court shall impose, in addition to any penalty provided by law, a requirement that the person register, within ten days of coming into a county in which the person resides or is temporarily domiciled, with the chief of police of the city or the sheriff of the county if the person resides in an area other than a city. The court shall require a person to register by stating this requirement on the court records. A person must also register if that person:
- a. Is incarcerated or is on probation or parole on August 1, 1995, for a crime against a child or as a sexual offender;
 - b. Has pled guilty or nolo contendere to, or been found guilty of, an offense in a court of another state or the federal government equivalent to those offenses set forth in subdivisions a and c of subsection 1; or
 - c. Has pled guilty to or been found guilty of a crime against a child or as a sexual offender within ten years prior to August 1, 1995.
- ~~3.~~ 4. When a person is required to register under this section, the official in charge of a facility or institution where the person required to register is confined, or the department, shall, before the discharge, parole, or release of that person, inform the person of the duty to register pursuant to this section. The official or the department shall require the person to read and sign a form as required by the attorney general, stating that the duty of the person to register has been explained to that person. The official in charge of the place of confinement, or the department, shall obtain the address where the person expects to reside upon discharge, parole, or release and shall report the address to the attorney general. The official in charge of the place of confinement, or the department, shall give one copy of the form to the person and shall send four copies to the attorney general no later than forty-five days before the scheduled release of that person. The attorney general shall forward one copy to the law enforcement agency having jurisdiction where the person expects to reside upon discharge, parole, or release, one copy to the prosecutor who prosecuted the person, and one copy to the court in which the person was prosecuted. All forms must be transmitted and received by

the law enforcement agency, prosecutor, and court thirty days before the discharge, parole, or release of the person.

- ~~4.~~ 5. A person who is required to register pursuant to this section who is released on probation or discharged upon payment of a fine must, before the release or discharge, be informed of that person's duty to register under this section by the court in which that person is convicted. The court shall require the person to read and sign a form as required by the attorney general, stating that the duty of the person to register under this section has been explained to that person. The court shall obtain the address where the person expects to reside upon release or discharge and shall report the address to the attorney general within three days. The court shall give one copy of the form to the person and shall send two copies to the attorney general. The attorney general shall forward one copy to the appropriate law enforcement agency having jurisdiction where the person expects to reside upon discharge, parole, or release.
- ~~5.~~ 6. Registration consists of a written statement signed by the person, giving the information required by the attorney general, and the fingerprints and photograph of the person. Within three days after registration, the registering law enforcement agency shall forward the statement, fingerprints, and photograph to the attorney general. If a person required to register pursuant to this section has a change in name or address, that person shall inform in writing, within ten days, the law enforcement agency with whom that person last registered of the person's new name or address. The law enforcement agency, within three days after receipt of the information, shall forward it to the attorney general. The attorney general shall forward the appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence. Upon a change of address, the person required to register shall also register within ten days at the law enforcement agency having local jurisdiction of the new place of residence. A law enforcement agency that has previously registered an offender may omit the fingerprint portion of the registration if that agency has a set of fingerprints on file for that individual and is personally familiar with and can visually identify the offender. These provisions also apply in any other state that requires registration.
- ~~6.~~ 7. A person required to register under this section shall comply with the registration requirement for a the longer of the following periods:

 - a. A period of ten years after the date of sentence or order deferring or suspending sentence upon a plea or finding of guilt or after release from incarceration, whichever is later; or
 - b. Until a court determination is made that the person no longer is a sexually violent predator. The sexually violent predator may petition no more than once a year for a court determination on the status of being a sexually violent predator. The court must receive a report from the qualified board before making the determination.
- ~~7.~~ 8. A person required to register under this section who violates this section is guilty of a class A misdemeanor. A court may not relieve a person who willfully violates this section from serving a term of at least ninety days in jail and completing probation of one year. A person who

violates this section who previously has pled guilty or been found guilty of violating this section is guilty of a class C felony.

- ~~8.~~ 9. When a person is released on parole or probation and is required to register pursuant to this section, but fails to do so within the time prescribed, the court shall order the probation, or the parole board shall order the parole, of the person revoked. The statements, photographs, and fingerprints required by this section are open to inspection by the public.
- ~~9.~~ 10. If a person required to register pursuant to this section is temporarily sent outside the facility or institution where that person is confined under conviction or sentence, the local law enforcement agency having jurisdiction over the place where that person is being sent must be notified within a reasonable time period before that person is released from the facility or institution. This subsection does not apply to any person temporarily released under guard from the facility or institution in which that person is confined.
- ~~40.~~ 11. Relevant and necessary registration information ~~may~~ shall be disclosed to the public by a law enforcement agency if the agency determines that the individual registered under this section is a public risk and disclosure of the registration information is necessary for public protection. The department, in a timely manner, shall provide law enforcement agencies any information the department determines is relevant concerning individuals required to be registered under this section who are about to be released or placed into the community. A law enforcement agency, its officials, and its employees are not subject to civil or criminal liability for disclosing or for failing to disclose information as permitted by this section. Nonregistration information concerning an offender required to register under this section consisting of the name of the offender, the last known address of the offender, the offense or offenses as defined in subsection 1 to which the offender pled guilty or of which the offender was found guilty, the date of the judgment or order imposing a sentence or probation and the court entering the judgment or order, the sentence or probation imposed upon the offender, and any disposition, if known, of a sentence or probation may be disclosed to the public. The attorney general shall compile nonregistration information concerning offenders required to register under this section from criminal history record information maintained pursuant to chapter 12-60 or from an agency or department of another state or the federal government and shall provide the information upon request at no cost.

SECTION 2. A new subsection to section 50-06-05.1 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

To provide for the qualifications for and the membership of a qualified board as required by section 12.1-32-15.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 137

HOUSE BILL NO. 1044

(Legislative Council)
(Criminal Justice Committee)
(Representatives Kliniske, Bernstein, R. Kelsch, Mahoney)
(Senators W. Stenehjem, Nalewaja)

REGISTRATION OF OFFENDERS

AN ACT to amend and reenact subsection 1 of section 12.1-32-15 of the North Dakota Century Code, relating to offender registration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹² **SECTION 1. AMENDMENT.** Subsection 1 of section 12.1-32-15 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. As used in this section:
 - a. "A crime against a child" means a violation of chapter 12.1-16, 12.1-17, 12.1-18, or 12.1-29, or an equivalent ordinance, in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt to commit these offenses.
 - b. "Department" means the department of corrections and rehabilitation.
 - c. "Sexual offender" means a person who has pled guilty to or been found guilty of a violation of section 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, 12.1-20-11, or chapter 12.1-27.2, or an equivalent ordinance, or an attempt to commit these offenses.

Approved March 25, 1997

Filed March 26, 1997

¹² Section 12.1-32-15 was also amended by section 1 of House Bill No. 1048, chapter 136; section 5 of Senate Bill No. 2153, chapter 124; and section 2 of House Bill No. 1357, chapter 128.

CHAPTER 138

SENATE BILL NO. 2209

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

CHILD INFORMATION RELEASE

AN ACT to amend and reenact subsections 7 and 8 of section 12.1-35-01, sections 12.1-35-03, 27-20-52, and 39-08-10.1 of the North Dakota Century Code, relating to the release of the identity of children and records regarding children and the release of the identity of persons seriously injured or deceased.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 7 and 8 of section 12.1-35-01 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

7. "Victim" means a living child who has suffered direct or threatened physical, financial, or emotional harm as a result of the commission or attempted commission of a crime.
8. "Witness" means any living child who has been or is expected to be summoned to testify in a criminal case whether or not any action or proceeding has been commenced.

SECTION 2. AMENDMENT. Section 12.1-35-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-35-03. Public Information about child victims or witnesses of crimes generally may not appear in public record.

1. In order to protect the child from possible trauma resulting from publicity, the name of the child victim or witness of a crime, except as specified in subsection 2, and identifying biographical information may not appear on the indictment or any other public record. Instead, a Jane Doe or Joe Doe designation must appear in all public records. Sealed confidential records containing the child's name and necessary biographical information must be kept in order to ensure that no defendant is charged twice.
2. Subsection 1 does not apply to the name and identifying biographical information of:
 - a. A child victim or witness of a criminal offense under title 39 or equivalent ordinance; and
 - b. A child victim of a fire.

¹³ **SECTION 3. AMENDMENT.** Section 27-20-52 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-20-52. Law enforcement records. Law enforcement records and files ~~concerning~~ of a child alleged or found to be delinquent, unruly, or deprived must be kept separate from the records and files of arrests of adults. Unless a charge of delinquency is transferred for criminal prosecution under section 27-20-34, the interest of national security requires, or the court otherwise orders in the interest of the child, ~~the these~~ records and files may not be open to public inspection; but inspection of ~~the these~~ records and files is permitted by:

1. A juvenile court having the child before it in any proceeding;
2. Counsel for a party to the proceeding;
3. The officers of public institutions or agencies to whom the child is committed;
4. Law enforcement officers of other jurisdictions when necessary for the discharge of their official duties;
5. A court in which the child is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceeding, or by officials of penal institutions and other penal facilities to which the child is committed, or by a parole or pardon board in considering the child's parole or discharge or in exercising supervision over the child; and
6. The professional staff of the uniform crime victims compensation program when necessary for the discharge of their duties pursuant to chapter 54-23.4.

Notwithstanding that law enforcement records ~~concerning~~ and files of a child alleged or found to be delinquent, unruly, or deprived are not open to public inspection, nothing in this section may be construed to limit the release of general information not identifying the identity of the child.

SECTION 4. AMENDMENT. Section 39-08-10.1 of the North Dakota Century Code is amended and reenacted as follows:

39-08-10.1. Investigating agency responsible to notify ~~next of kin~~ immediate family.

1. In the event of serious injury to or death of any person, under circumstances leading to the notification of a law enforcement agency, the investigating law enforcement agency shall, upon positive identification of the person or persons involved, be responsible for immediately notifying the ~~next of kin~~ immediate family of the person or persons seriously injured or deceased, or ~~make~~ making arrangements to have ~~next of kin~~ the immediate family notified by clergy or other suitable person.

¹³ Section 27-20-52 was also amended by section 5 of Senate Bill No. 2045, chapter 115.

2. The investigating law enforcement agency may not release to the public the identity of the person or persons seriously injured or deceased until the first of the following events occurs:
 - a. A member of the immediate family has been notified and given an opportunity to notify other immediate family members; or
 - b. Twenty-four hours has elapsed from the time positive identification was made.
3. For purposes of this section, "immediate family" means spouse, parent, child, sibling, or any person who regularly resides in the household of the seriously injured or deceased person.

Approved April 2, 1997

Filed April 3, 1997

CHAPTER 139**HOUSE BILL NO. 1049**

(Legislative Council)

(Criminal Justice Committee)

(Representatives Stenejem, Mahoney, Kliniske, R. Kelsch, Bernstein)

(Senator Nalewaja)

CHILD TESTIMONY LIMITATIONS

AN ACT to amend and reenact section 12.1-35-04 of the North Dakota Century Code, relating to limits on child testimony.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-35-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-35-04. Limits on interviews and testimony. The prosecuting attorney, the court, and appropriate law enforcement personnel ~~shall~~, to the extent possible, shall protect the victim or witness from the psychological damage of repeated or lengthy ~~interrogation~~ interview, testimony, or discovery proceedings while preserving the rights of the public, the victim, and the person charged with the violation.

Approved March 13, 1997

Filed March 13, 1997

CHAPTER 140

SENATE BILL NO. 2221

(Senators Christmann, Andrist, Cook)
(Representatives Boehm, Brusegaard, Clark)

PERPETRATOR INJURY CLAIMS BARRED

AN ACT to create and enact a new chapter to title 12.1 of the North Dakota Century Code, relating to barring perpetrators of certain crimes from recovering for injuries sustained during criminal conduct.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 12.1 of the North Dakota Century Code is created and enacted as follows:

Definitions. As used in this section, unless the context otherwise requires:

1. "Convicted" includes a finding of guilt, whether or not the adjudication of guilt is stayed or executed, an unwithdrawn judicial admission of guilt or guilty plea, a no contest plea, a judgment of conviction, an adjudication as a delinquent child, or an admission to a juvenile delinquency petition.
2. "Course of criminal conduct" includes the acts or omissions of a victim in resisting criminal conduct.
3. "Crime" includes an offense named in section 12.1-16-01, 12.1-16-02, 12.1-16-03, 12.1-17-01, 12.1-17-01.1, 12.1-17-02, 12.1-17-03, 12.1-17-04, chapter 12.1-18, section 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-07, chapter 12.1-21, section 12.1-22-01, 12.1-22-02, or 12.1-22-03, or an attempt to commit any of these offenses. The term includes a crime in other states which would have been within this definition if the crime had been committed in this state.
4. "Perpetrator" means a person who has engaged in criminal conduct and includes a person convicted of a crime.
5. "Victim" means a person who was the object of another's criminal conduct and includes a person at the scene of an emergency who gives reasonable assistance to another person who is exposed to or has suffered grave physical harm.

Perpetrator's assumption of the risk. A perpetrator assumes the risk of loss, injury, or death resulting from or arising out of a course of criminal conduct involving a crime, as defined in this Act, engaged in by the perpetrator or an accomplice, as defined in section 12.1-03-01, and the crime victim is immune from and not liable for any damages as a result of acts or omissions of the victim if the victim used reasonable force as authorized in section 12.1-05-03 or 12.1-05-04. However, the perpetrator's assumption of risk does not eliminate the crime victim's duty to protect against conditions upon the premises which the crime victim knows or has reason to know may create an unreasonable risk of harm or which may

cause a foreseeable trespass by minors, nor does the assumption of risk apply to perpetrators who are mentally incompetent or deficient.

Evidence. Notwithstanding other evidence that the victim may adduce relating to the perpetrator's conviction of the crime involving the parties to a claim for relief, a certified copy of a guilty plea, a court judgment of guilt, a court record of conviction, or an adjudication as a delinquent child is conclusive proof of the perpetrator's assumption of the risk.

Attorney's fees to victim. If the perpetrator does not prevail in a claim for relief that is subject to this chapter, the court may award reasonable expenses, including attorney's fees and disbursements, to the victim.

Stay of claim for relief. Except to the extent needed to preserve evidence, any claim for relief in which the defense set forth in this chapter is raised must be stayed by the court on the motion of the defendant during the pendency of any criminal action against the plaintiff based on the alleged crime.

Approved April 2, 1997

Filed April 3, 1997

DEBTOR AND CREDITOR RELATIONSHIP

CHAPTER 141

HOUSE BILL NO. 1156

(Industry, Business and Labor Committee)

(At the request of the Department of Banking and Financial Institutions)

INTEREST RATE MAXIMUM AND CONSUMER FINANCE LICENSING

AN ACT to create and enact a new section to chapter 13-03.1 of the North Dakota Century Code, relating to the maximum interest charge for loans under one thousand dollars and license exemptions; to amend and reenact subsection 1 of section 6-01-01.1, sections 13-03.1-02, 13-03.1-03, 13-03.1-05, 13-03.1-06, 13-03.1-07, 13-03.1-15, and 13-03.1-18 of the North Dakota Century Code, relating to the financial institutions regulatory fund, the administration and scope of the Consumer Finance Act, application and fees of consumer finance licensees, requirements for the issuance of consumer finance licenses, continuing license fees, consumer finance lending limitations, and setting penalties for legal violations; and to repeal chapter 13-03 of the North Dakota Century Code, relating to the licensing of small loan companies; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 6-01-01.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. There is hereby created a special fund designated as the financial institutions regulatory fund. The amounts received under the following ~~sections chapters~~, and any other moneys received by the department of banking and financial institutions, must be deposited into this fund: ~~sections 6-01-17, 6-01-17.1, 6-01-17.2, 6-03-70, 6-05-28, subsections 1, 2, and 4 of section 6-06-08, sections 6-10-06, 7-05-01, 13-03-04, subsection 1 of section 13-03-09, section 13-03.1-05, subsection 1 of section 13-03.1-11, section 13-04.1-04, subdivision a of subsection 1 of section 13-04.1-11, section 13-05-04, subsection 2 of section 13-05-06, subsection 1 of section 51-17-07, and section 51-17-10 chapters 6-01, 6-03, 6-05, 6-06, 6-10, 7-05, 13-03.1, 13-04.1, 13-05, and 51-17.~~

SECTION 2. A new section to chapter 13-03.1 of the North Dakota Century Code is created and enacted as follows:

Maximum charges permitted for loans not in excess of one thousand dollars - Refund - Installment payments - Permitted charges.

1. Every licensee may make loans under this section in any amount not exceeding one thousand dollars, and may contract for, receive, or collect on the loans, charges not in excess of two and one-half percent per month on that part of the unpaid balance of principal not exceeding two hundred fifty dollars; two percent per month on that part of the unpaid balance of principal exceeding two hundred fifty dollars but not exceeding five hundred dollars; one and three-fourths percent per month on that part of the unpaid balance of principal in excess of five hundred dollars but not exceeding seven hundred fifty dollars; and one and one-half percent per month on that part of the unpaid balance of principal exceeding seven hundred fifty dollars but not exceeding one thousand dollars. For the purpose of computing charges for a fraction of a month, whether at the maximum rate or less, a day is considered one-thirtieth of a month. Amounts to be charged for any small loan by a licensee under this chapter may also be calculated and charged on a stated dollar per hundred basis but the charges over the entire term of the loan may not be in excess of the equivalent percentage charges on the monthly unpaid balances of principal authorized in this section. If charges are calculated and charged on a dollar per hundred basis, the loan must be repayable in substantially equal periodic installments of principal and charges, and the annual percentage simple interest equivalent must be conspicuously stated in the note or small loan contract executed in connection with the loan.
2. When any note or loan contract in which charges have been calculated and charged on a dollar per hundred basis is paid in full by cash, a new loan, renewal or otherwise, one month or more before the final installment date, the licensee shall refund or credit to the borrower a portion of the total charges which must be at least as great as the sum of the full periodic installment balances scheduled to follow the installment date following the date of prepayment in full bears to the sum of all the periodic installment balances of the loan contract, both sums to be determined according to the payment schedules that had been agreed upon in the loan contract. Charges during the month of payment must be prorated in the proportion that the number of days remaining in the installment period bears to the total days of the installment period. No refund of one dollar or less need be made.
3. On any note or loan contract in which charges have been calculated and charged on a dollar per hundred basis, a licensee may charge, collect, and receive on any installment of principal and charges continuing unpaid for five or more days from the date the payment is due a sum that may not exceed the amount of charges during the final full month of the loan before maturity. The charge may not be collected more than once for the same default. The charge may be collected at the time of the default or any time thereafter. However, if the charge is taken out of any payment received after a default occurs and if the deduction results in the default of a subsequent installment, no charge may be made for the subsequent default.
4. On any note or loan contract in which charges have been calculated and charged on a dollar per hundred basis, if the payment date for any scheduled installment is deferred one or more full months and a corresponding deferment is made for all subsequent installments, the licensee may charge and receive a deferment charge that may not exceed one-twelfth of the charges authorized in subsection 1 applied to the

balance of principal and charges due at the date of the deferment multiplied by the number of full months during the deferment in which no payment is made. Thereafter, charges must be made over the remaining extended life of the loan in the same manner and at the same ratio as though no deferral or extension had been granted. The charges may be collected at the time of the deferment or any later time. If the loan is prepaid in full during the deferment period, the borrower is entitled to receive in addition to the refund required under subsection 2 a refund of that portion of the deferment charge applicable to any unexpired months of deferment period.

5. A licensee may not enter into any contract of loan under this section under which the borrower agrees to make any scheduled payment of principal and charges more than twenty-four and one-half calendar months from the date of making the contract. Every loan contract must require payment of principal and charges in installments that must be payable at approximately equal periodic intervals except that payment dates may be omitted to accommodate borrowers with seasonal incomes. No installment contracted for may be substantially larger than any preceding installment. When a loan contract provides for monthly installments, the first installment may be payable at any time within forty-five days after the date of the loan.
6. A licensee may not induce or permit any person, or husband and wife, jointly or severally, to be obligated, directly or indirectly, under more than one contract of loan at the same time if the multiple loans result in a higher rate of charge than would otherwise be permitted by this chapter.
7. No further amount in addition to the charges provided for in this chapter may be directly or indirectly charged, contracted for, or received. However, this restriction does not apply to court costs, lawful fees for the filing, recording, or releasing in any public office of any instrument securing a loan, and the identifiable charge or premium for insurance provided for in section 13-03.1-17. If any sum in excess of the amounts authorized by this chapter is willfully charged, contracted for or received, the licensee or any assignee or other person has no right to collect or receive any charges or recompense.

SECTION 3. AMENDMENT. Section 13-03.1-02 of the North Dakota Century Code is amended and reenacted as follows:

13-03.1-02. Administration and exemptions.

1. The administrator may employ such employees as may be necessary to administer and enforce the provisions of this chapter and may delegate ~~his~~ the administrator's powers and duties under this chapter to the supervisor of consumer credit. The supervisor of consumer credit and employees may not have a financial interest, directly or indirectly, in any business which is subject to this chapter, or in any other business which is supervised by the administrator, or in any similar business which is conducted under the authority of any law of the United States. All fees received by the administrator under the provisions of this chapter must be ~~credited to~~ deposited in the general fund of this state financial institutions regulatory fund.

2. This chapter does not apply to any person doing business under and as permitted by any law of this state or of the United States relating to banking associations, banking institutions, banks, savings banks, trust companies, savings or building and loan associations, mutual investment corporations, mutual savings corporations, or credit unions nor to any person conducting a bona fide pawnbroking business transacted under a pawnbroker's license for loans in an amount not to exceed one thousand dollars and such persons are not eligible to become a licensee under this chapter.

SECTION 4. AMENDMENT. Section 13-03.1-03 of the North Dakota Century Code is amended and reenacted as follows:

13-03.1-03. Scope. Persons licensed under the provisions of this chapter may engage in the business of lending in amounts ~~of more than one thousand dollars and not more than thirty~~ not to exceed thirty-five thousand dollars and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, ~~which in the aggregate are greater than that permitted by section 47-14-09.~~ This chapter does not apply to loans made under chapter 13-03, but persons licensed under that chapter may obtain licenses to make loans under subject to the limitations provided in this chapter.

SECTION 5. AMENDMENT. Section 13-03.1-05 of the North Dakota Century Code is amended and reenacted as follows:

13-03.1-05. Application and fees. Application for a license must be in writing, under oath, and in the form prescribed by the administrator. The application must give the location where the business is to be conducted and must contain such further information as the administrator may require, including the names and addresses of the partners, officers, directors, or trustees, and of such of the principal owners or members as will provide the basis for the investigations and findings contemplated by section 13-03.1-06. When making such application, the applicant shall include payment in the amount of three hundred dollars, which is not subject to refund, as a fee for investigating the application, and two hundred dollars for the annual license fee. ~~Fees must be deposited in the financial institutions regulatory fund.~~

SECTION 6. AMENDMENT. Section 13-03.1-06 of the North Dakota Century Code is amended and reenacted as follows:

13-03.1-06. Investigation of application - Requirements for issuance of license - Denial of license - Public record.

1. Upon the filing of an application and the payment of the fees therefor the administrator shall investigate the facts concerning the application.
2. The administrator shall issue a license to operate a consumer finance loan business if ~~he~~ the administrator finds:
 - a. That the financial responsibility, experience, character, and general fitness of the applicant are such as to warrant the belief that the business will be operated lawfully, and fairly; and
 - b. That the applicant has assets of at least twenty-five thousand dollars for the operation of the business.

3. The administrator shall approve or deny every application for a license hereunder within sixty days from the filing thereof with the fee.
4. No application may be denied until the applicant has had a notice of a hearing on the application and an opportunity to be heard thereon. Whenever an application is denied, the administrator shall, within twenty days thereafter, prepare and keep on file in ~~his~~ the administrator's office a written order of denial thereof. The order must contain its findings with respect thereto and the reasons supporting the denial, and the administrator shall send a copy thereof by registered mail to the applicant at the address set forth in the application within five days after the filing of ~~such~~ the order. If the administrator finds the applicant is not qualified to be issued a license, ~~he~~ the administrator shall ~~also~~ return the license fee but may retain the investigation fee.
5. ~~All persons licensed or otherwise authorized under the provisions of chapter 13-03 on July 4, 1975, may obtain licenses to make loans under this chapter.~~ The administrator shall, upon request and payment of the annual license fee, deliver evidence of licensing under this chapter to the persons so previously licensed or authorized.

SECTION 7. AMENDMENT. Section 13-03.1-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

13-03.1-07. Posting of license - Continuing license - Annual fee.

1. Each license must state the address at which the business is to be conducted and must state fully the name of the licensee, and if the licensee is a copartnership or association, the name of the members thereof, and if a corporation, the date and place of incorporation, and if a limited liability company, the date and place of organization. Each license must be kept posted in the licensed place of business and is not transferable or assignable.
2. Each license must remain in ~~full force and~~ effect until surrendered, revoked, or suspended; provided, that on or before the tenth day of June of each year the licensee shall pay to the administrator the ~~sum of one hundred dollars~~ annual license fee for each license held ~~by him~~, as a license fee for the succeeding fiscal year.

SECTION 8. AMENDMENT. Section 13-03.1-15 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

13-03.1-15. Maximum charges permitted - Installment payments - Other charges.

1. Every licensee may make loans under this section, including revolving loans, in any principal amount more than one thousand dollars but not more than ~~thirty~~ thirty-five thousand dollars and may contract for, receive, or collect interest on ~~such~~ the loans at any rate agreed upon by the licensee and the borrower.
2. Every loan contract ~~shall~~ must require payment of principal and charges in installments which must be payable at approximately equal periodic intervals except that payment dates may be omitted to accommodate borrowers with seasonal incomes. No installment contracted for may be

substantially larger than any preceding installment, except in the case of revolving loan contracts. When a loan contract provides for monthly installments, the first installment may be payable at any time within forty-five days after the date of the loan.

3. Interest may be collected on the unpaid balance of any judgment at a rate not exceeding that permitted by section 47-14-09.
4. No further amount whatsoever in addition to the charges provided for in this chapter may be directly or indirectly charged, contracted for, or received. No agreement may provide for the payment by the debtor of attorney fees. However, such restrictions do not apply to court costs, lawful fees for the filing, recording, or releasing in any public office of any instrument securing a loan, an amount not exceeding closing costs actually incurred in connection with a loan secured by an interest in land (including fees or premiums for title examination, title insurance, and surveys, fees for notarizing title or mortgage documents, and appraisal fees), and the identifiable charge or premium for insurance provided for in section 13-03.1-17. A bona fide error of law or fact is not deemed a violation of this section. A bona fide clerical error in the calculation of interest is not deemed a violation of this section if the licensee corrects the error.
5. ~~No licensee may have outstanding to the same person at the same time a loan under this chapter and also under chapter 13-03.~~

SECTION 9. AMENDMENT. Section 13-03.1-18 of the North Dakota Century Code is amended and reenacted as follows:

13-03.1-18. Penalty. ~~Any~~ A person who violates any of the provisions of this chapter or ~~regulations~~ rules or ~~orders promulgated~~ adopted thereunder is guilty of a class A misdemeanor. ~~In the event and~~ If a contract of loan in an amount exceeding one thousand dollars or any act in its making or collection violates the provisions of this chapter, the lender has no right to collect, receive, or retain any interest or charges whatsoever. If a contract of loan in an amount of one thousand dollars or less, or any willful act in its making or collection violates the provisions of this chapter, the lender has no right to collect, receive, or retain any interest or charges on that loan.

SECTION 10. REPEAL. Chapter 13-03 of the North Dakota Century Code is repealed.

Approved March 27, 1997
Filed March 27, 1997

CHAPTER 142

SENATE BILL NO. 2135

(Industry, Business and Labor Committee)

(At the request of the Department of Banking and Financial Institutions)

COLLECTION AGENCY OFFICER REMOVAL

AN ACT to create and enact a new section to chapter 13-05 of the North Dakota Century Code, relating to removal from office of collection agency officers or employees by the department of banking and financial institutions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 13-05 of the North Dakota Century Code is created and enacted as follows:

Suspension and removal of collection agency officers or employees.

1. The commissioner of banking and financial institutions may issue and serve upon any collection agency officer or employee and upon the collection agency involved, a complaint stating the basis for the commissioner's belief that the officer or employee is willfully engaging or has willfully engaged in any of the following conduct:
 - a. Violating any law, rule, order, or written agreement with the commissioner;
 - b. Engaging in any harassment or abuse, the making of false or misleading representations, or engaging in unfair practices involving collection activity; or
 - c. Performing any act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.
2. The complaint must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If no hearing is requested within twenty days of the date the complaint is served upon the officer or employee, or if a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter an order suspending or temporarily removing the employee or officer from office for a period not exceeding three years from the effective date of the suspension or temporary removal.
4. A contested or default suspension or temporary removal order is effective immediately upon service of the order on the officer or employee and upon the collection agency. A consent order is effective as agreed. An officer or employee suspended or temporarily removed from office pursuant to this section is not eligible, while under suspension, for reinstatement to any position within a licensed collection agency.

5. When an officer or employee, or other person participating in the conduct of the affairs of a collection agency is charged with a felony in state or federal court which involves dishonesty or breach of trust, the commissioner may immediately suspend the person from office or prohibit the person from any further participation in the collection affairs, or both. The order is effective immediately upon service of the order on the collection agency and the person charged, and remains in effect until the criminal charge is finally disposed of or until modified by the commissioner. If a judgment of conviction, federal pretrial diversion, or similar state order or judgment is entered, the commissioner may order that the suspension or prohibition be made permanent. A finding of not guilty or other disposition of the charge does not preclude the commissioner from pursuing administrative or civil remedies.
6. Under this section, a person engages in conduct "willfully" if the person acted intentionally in the sense that the person was aware of what the person was doing.

Approved March 19, 1997

Filed March 19, 1997

DOMESTIC RELATIONS AND PERSONS

CHAPTER 143

HOUSE BILL NO. 1478

(Representatives Boehm, Kerzman, Sandvig)

(Senator Wanzek)

INFORMATION PROVIDED TO PREGNANT WOMEN

AN ACT to amend and reenact subdivision b of subsection 1 of section 14-02.1-02.1 of the North Dakota Century Code, relating to information to be provided to pregnant women.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision b of subsection 1 of section 14-02.1-02.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- b. Materials designed to inform the woman of the probable anatomical and physiological characteristics of the ~~unborn child~~ fetus at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including any relevant information on the possibility of the ~~unborn child's~~ survival of the fetus and pictures representing the development of a fetus at two-week gestational increments. The pictures must contain the dimensions of the fetus and must be realistic and appropriate for the stage of pregnancy depicted. The materials must be objective, nonjudgmental, and designed to convey only accurate scientific information about the ~~unborn child~~ fetus at the various gestational ages.

Approved April 9, 1997

Filed April 10, 1997

CHAPTER 144**SENATE BILL NO. 2181**

(Senators Klein, O'Connell, Robinson)
(Representatives Murphy, Sandvig)

**GOVERNMENTAL CONTRACT DISCRIMINATION
PROHIBITED**

AN ACT to prohibit governmental discrimination in contracts and programs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Discrimination in governmental contracts and programs prohibited. A governmental entity may not discriminate against any health care institution or any private agency in any grant, contract, or program because of the institution's or agency's refusal to permit, perform, assist, counsel, or participate in any manner in any health care service that violates the institution's or agency's written religious or moral policies.

Approved March 21, 1997
Filed March 21, 1997

CHAPTER 145

SENATE BILL NO. 2230

(Senators Christmann, Wanzek, Watne)
(Representatives Kerzman, Nelson, Sandvig)

RECOGNITION OF FOREIGN MARRIAGES

AN ACT to amend and reenact sections 14-03-01 and 14-03-08 of the North Dakota Century Code, relating to the definition of marriage and the recognition of a foreign marriage; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-03-01 of the North Dakota Century Code is amended and reenacted as follows:

14-03-01. What constitutes marriage - Spouse defined. Marriage is a personal relation arising out of a civil contract between ~~a male~~ one man and a ~~female~~ one woman to which the consent of the parties is essential. The marriage relation may be entered into, maintained, annulled, or dissolved only as provided by law. A spouse refers only to a person of the opposite sex who is a husband or a wife.

SECTION 2. AMENDMENT. Section 14-03-08 of the North Dakota Century Code is amended and reenacted as follows:

14-03-08. Foreign marriages recognized - Exception. ~~All~~ Except when residents of this state contract a marriage in another state which is prohibited under the laws of this state, all marriages contracted outside ~~of~~ this state, which are valid according to the laws of the state or country where contracted, are valid in this state. ~~This section does not apply when residents of this state contract a marriage in another state which is prohibited under the laws of North Dakota.~~ This section applies only to a marriage contracted in another state or country which is between one man and one woman as husband and wife.

SECTION 3. EFFECTIVE DATE. If the legislature of another state enacts a law under which a marriage between two individuals, other than between one man and one woman, is a valid marriage in that state or the highest court of another state holds that under the law of that state a marriage between two individuals, other than between one man and one woman, is a valid marriage, the governor of this state shall certify that fact to the legislative council. The certification must include the effective date of the other state's legislation or the date of the court decision. Sections 1 and 2 of this Act are effective as of the earlier of the effective date of that law or the date of that decision.

Approved March 25, 1997
Filed March 25, 1997

CHAPTER 146

SENATE BILL NO. 2359

(Senators Robinson, Nalewaja, St. Aubyn)
(Representatives Gerntholz, Sabby)

MARRIAGE SOLEMNIZATION

AN ACT to amend and reenact section 14-03-09 of the North Dakota Century Code, relating to the persons who may solemnize a marriage; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ **SECTION 1. AMENDMENT.** Section 14-03-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-03-09. Who may solemnize marriages. Marriages may be solemnized by all judges of courts of record ~~within their respective jurisdictions, by, municipal judges,~~ clerks of district court, ~~by~~ ordained ministers of the gospel ~~and, priests of every church, by ministers of the gospel and clergy licensed by regular church bodies or recognized denominations and serving as pastors of churches pursuant to chapters 10-24 through 10-28,~~ and by any person authorized by the ~~forms and usages rituals and practices of any church or religious denomination or organization organized or possessing a certificate of authority pursuant to chapters 10-24 through 10-28~~ persuasion.

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

Approved April 4, 1997
Filed April 4, 1997

¹ Section 14-03-09 was also amended by section 3 of Senate Bill No. 2210, chapter 105.

CHAPTER 147

SENATE BILL NO. 2235

(Senators W. Stenehjem, Traynor, Watne)
(Representatives Kretschmar, Murphy, Stenehjem)

DOMESTIC VIOLENCE IN CUSTODY PROCEEDINGS

AN ACT to amend and reenact subsections 3 and 5 of section 14-05-22 and subdivision j of subsection 1 of section 14-09-06.2 of the North Dakota Century Code, relating to the effect of domestic violence on visitation rights and child custody proceedings; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 3 and 5 of section 14-05-22 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. If the court finds that a parent has perpetrated domestic violence and that parent does not have custody, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, the court shall allow only supervised child visitation with that parent unless there is a showing by clear and convincing evidence that unsupervised visitation would not endanger the child's physical or emotional health.
5. In any custody or visitation proceeding in which a parent is found to have perpetrated domestic violence, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, all court costs, attorneys' fees, evaluation fees, and expert witness fees must be paid by the perpetrator of the domestic violence unless those costs would place an undue financial hardship on that parent.

SECTION 2. AMENDMENT. Subdivision j of subsection 1 of section 14-09-06.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- j. Evidence of domestic violence. In awarding custody or granting rights of visitation, the court shall consider evidence of domestic violence. If the court finds credible evidence that domestic violence has occurred, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, this ~~evidence~~ combination creates a rebuttable presumption that a parent who has perpetrated domestic violence may not be awarded sole or joint custody of a child. This presumption may be overcome only by clear and convincing evidence that the best interests of the child require that parent's participation as a custodial parent. The court shall cite specific findings of fact to show that the custody or

visitation arrangement best protects the child and the parent or other family or household member who is the victim of domestic violence. If necessary to protect the welfare of the child, custody may be awarded to a suitable third person, provided that the person would not allow access to a violent parent except as ordered by the court. If the court awards custody to a third person, the court shall give priority to the child's nearest suitable adult relative. The fact that the abused parent suffers from the effects of the abuse may not be grounds for denying that parent custody. As used in this subdivision, "domestic violence" means domestic violence as defined in section 14-07.1-01. A court may consider, but is not bound by, a finding of domestic violence in another proceeding under chapter 14-07.1.

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

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 148

SENATE BILL NO. 2266

(Senators W. Stenehjem, Watne)
(Representatives Delmore, Hawken, Kretschmar)

DOMESTIC VIOLENCE ARREST AND PROTECTION ORDER

AN ACT to create and enact a new subsection to section 14-07.1-13 of the North Dakota Century Code, relating to domestic violence arrest procedures; and to amend and reenact subsections 4 and 8 of section 14-07.1-02, subsection 2 of section 14-07.1-03, and subsection 1 of section 29-06-15 of the North Dakota Century Code, relating to domestic violence protection orders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 4 and 8 of section 14-07.1-02 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

4. Upon a showing of actual or imminent domestic violence, the court may enter a protection order after due notice and full hearing. The relief provided by the court may include any or all of the following:
 - a. Restraining any party from threatening, molesting, injuring, harassing, or having contact with any other person.
 - b. Excluding either the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person against whom the domestic violence is occurring, or from a domestic violence care facility, if this exclusion is necessary to the physical or mental well-being of the applicant or others.
 - c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.
 - d. Recommending or requiring that either or both parties undergo counseling with a domestic violence program or other agency that provides professional services that the court deems appropriate. The court may request a report from the designated agency within a time period established by the court. The costs of the court-ordered initial counseling assessment and subsequent reports must be borne by the parties or, if indigent, by the respondent's county of residence.
 - e. Requiring a party to pay such support as may be necessary for the support of a party and any minor children of the parties and reasonable attorneys' fees and costs.
 - f. Awarding temporary use of personal property, including motor vehicles, to either party.

- g. Requiring the respondent to surrender for safekeeping any firearm or other specified dangerous weapon, as defined in section 12.1-01-04, in the respondent's immediate possession or control or subject to the respondent's immediate control, if the court has probable cause to believe that the respondent is likely to use, display, or threaten to use the firearm or other dangerous weapon in any further acts of violence. If so ordered, the respondent shall surrender the firearm or other dangerous weapon to the sheriff, or the sheriff's designee, of the county in which the respondent resides or to the chief of police, or the chief's designee, of the city in which the respondent resides.
8. The petition for an order for protection must contain a statement listing each civil or criminal action ~~to which~~ involving both parties ~~were a party.~~

SECTION 2. AMENDMENT. Subsection 2 of section 14-07.1-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. An ex parte temporary protection order may include:
- a. Restraining any party from having contact with or committing acts of domestic violence on another person.
 - b. Excluding the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person, or from a domestic violence shelter care facility.
 - c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.
 - d. Requiring the respondent to surrender for safekeeping any firearm or other specified dangerous weapon, as defined in section 12.1-01-04, in the respondent's immediate possession or control or subject to the respondent's immediate control, if the court has probable cause to believe that the respondent is likely to use, display, or threaten to use the firearm or other dangerous weapon in any further acts of violence. If so ordered, the respondent shall surrender the firearm or other dangerous weapon to the sheriff, or the sheriff's designee, of the county in which the respondent resides or the chief of police, or the chief's designee, of the city in which the respondent resides.

SECTION 3. A new subsection to section 14-07.1-13 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

A law enforcement officer shall arrest a person without a warrant if the officer determines there is probable cause that the person has committed the offense of violating an order prohibiting contact under this section, whether or not the violation was committed in the presence of the officer. A law enforcement officer who acts in good faith on probable cause and without malice is immune from any civil or criminal liability for making an arrest under this subsection.

SECTION 4. AMENDMENT. Subsection 1 of section 29-06-15 of the North Dakota Century Code is amended and reenacted as follows:

1. A law enforcement officer, without a warrant, may arrest a person:
 - a. For a public offense, committed or attempted in the officer's presence; and for the purpose of this subdivision, a crime must be deemed committed or attempted in the officer's presence when what the officer observes through the officer's senses reasonably indicates to the officer that a crime was in fact committed or attempted in the officer's presence by the person arrested.
 - b. When the person arrested has committed a felony, although not in the officer's presence.
 - c. When a felony in fact has been committed, and the officer has reasonable cause to believe the person arrested to have committed it.
 - d. On a charge, made upon reasonable cause, of the commission of a felony by the party arrested.
 - e. For the public offenses, not classified as felonies and not committed in the officer's presence as provided for under section 29-06-15.1.
 - f. On a charge, made upon reasonable cause, of driving or being in actual physical control of a vehicle while under the influence of alcoholic beverages.
 - g. For the offense of violating a protection order under section 14-07.1-06, an order prohibiting contact under section 14-07.1-13, or for an assault involving domestic violence pursuant to under section 14-07.1-11.

Approved March 26, 1997

Filed March 27, 1997

CHAPTER 149

SENATE BILL NO. 2167

(Senators W. Stenehjem, C. Nelson)
(Representatives Kretschmar, Mahoney, Stenehjem)

POSTJUDGMENT CUSTODY MODIFICATION MOTIONS

AN ACT to create and enact section 14-09-06.6 of the North Dakota Century Code, relating to motions for postjudgment custody modification.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 14-09-06.6 of the North Dakota Century Code is created and enacted as follows:

14-09-06.6. Limitations on postjudgment custody modifications.

1. Unless agreed to in writing by the parties, no motion to modify a custody order may be made earlier than two years after the date of entry of an order establishing custody, except in accordance with subsection 3.
2. Unless agreed to in writing by the parties, if a motion for modification has been disposed of upon its merits, no subsequent motion may be filed within two years of disposition of the prior motion, except in accordance with subsection 3.
3. The time limitation in subsections 1 and 2 does not apply if the court finds:
 - a. The persistent and willful denial or interference with visitation;
 - b. The child's present environment may endanger the child's physical or emotional health or impair the child's emotional development; or
 - c. The primary physical care of the child has changed to the other parent for longer than six months.
4. A party seeking modification of a custody order shall serve and file moving papers and supporting affidavits and shall give notice to the other party to the proceeding who may serve and file a response and opposing affidavits. The court shall consider the motion on briefs and without oral argument or evidentiary hearing and shall deny the motion unless the court finds the moving party has established a prima facie case justifying a modification. If a prima facie case is established, the court shall set a date for an evidentiary hearing.
5. The court may not modify a prior custody order within the two-year period following the date of entry of an order establishing custody unless the court finds the modification is necessary to serve the best interest of the child and:

- a. The persistent and willful denial or interference with visitation;
 - b. The child's present environment may endanger the child's physical or emotional health or impair the child's emotional development; or
 - c. The primary physical care of the child has changed to the other parent for longer than six months.
6. The court may modify a prior custody order after the two-year period following the date of entry of an order establishing custody if the court finds:
- a. On the basis of facts that have arisen since the prior order or which were unknown to the court at the time of the prior order, a material change has occurred in the circumstances of the child or the parties; and
 - b. The modification is necessary to serve the best interest of the child.
7. The court may modify a prior custody order at any time if the court finds a stipulated agreement by the parties to modify the custody is in the best interest of the child.
8. Upon a motion to modify custody under this section, the burden of proof is on the moving party.

Approved March 21, 1997

Filed March 21, 1997

CHAPTER 150

SENATE BILL NO. 2280

(Senator W. Stenehjem)

CHILD SUPPORT INCOME WITHHOLDING ORDERS

AN ACT to amend and reenact section 14-09-09.18 of the North Dakota Century Code, relating to child support income withholding orders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-09-09.18 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.18. Interstate income withholding - Initiation by this state to other state. On application of a resident of this state, an obligee or an obligor of a support order issued by this state, or an agency to which an obligee has assigned support rights, the public authority shall promptly request the child support enforcement agency of another state in which the obligor of a support order derives income to enter the order for the purpose of obtaining income withholding against such income. The public authority shall make that request within twenty days of the later of the date income withholding is determined appropriate or the date of receipt of any information necessary to carry out withholding. The public authority shall compile and transmit to the child support agency of the other state all documentation required to enter an order for this purpose. The public authority shall also transmit to the child support agency certified copies of any subsequent modifications of the support order. If the public authority receives notice that the obligor is contesting the income withholding in another state, it shall immediately notify the individual obligee of the date, time, and place of the hearings and of the obligee's right to attend.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 151**SENATE BILL NO. 2357**

(Senators DeMers, C. Nelson)
(Representative Jensen)

VISITATION INTERFERENCE

AN ACT to create and enact a new section to chapter 14-09 of the North Dakota Century Code, relating to the interference with visitation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

Interference with visitation - Attorney's fees. In any proceeding where child visitation is properly in dispute between the parents of a minor child, the court shall award the noncustodial parent reasonable attorney's fees and costs if the court determines there has been willful and persistent denial of visitation rights by the custodial parent with respect to the minor child.

Approved March 25, 1997
Filed March 26, 1997

CHAPTER 152

HOUSE BILL NO. 1093

(Judiciary Committee)

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

UNIFORM INTERSTATE FAMILY SUPPORT ACT

AN ACT to create and enact sections 14-12.2-33.1, 14-12.2-33.2, 14-12.2-33.3, 14-12.2-33.4, 14-12.2-33.5, 14-12.2-46.1, and 14-12.2-46.2 of the North Dakota Century Code, relating to the Uniform Interstate Family Support Act; to amend and reenact subsections 6, 7, 16, 19, and 20 of section 14-12.2-01, sections 14-12.2-07, 14-12.2-08, 14-12.2-10, 14-12.2-16, subsections 1 and 5 of section 14-12.2-17, section 14-12.2-18, subsection 2 of section 14-12.2-19, sections 14-12.2-33, 14-12.2-39, subsections 1 and 3 of section 14-12.2-40, sections 14-12.2-45, 14-12.2-46, and 14-12.2-47 of the North Dakota Century Code, relating to the Uniform Interstate Family Support Act; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 6, 7, 16, 19, and 20 of section 14-12.2-01 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

6. "Income-withholding order" means an order or other legal process directed to an obligor's employer or income payer ~~payor~~, as defined by section 14-09-09.10, to withhold support from the income of the obligor.
7. "Initiating state" means a state ~~in~~ from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this chapter or a law or procedure substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act ~~is filed for forwarding to a responding state~~.
16. "Responding state" means a state ~~to~~ in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this chapter or a law or procedure substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.
19. "State" means a state of the United States, the District of Columbia, ~~the Commonwealth of~~ Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term "~~state~~" includes ~~an~~:
 - a. An Indian tribe; and includes a
 - b. A foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

20. "Support enforcement agency" means a public official or agency authorized to seek:
- a. Enforcement of support orders or laws relating to the duty of support;
 - b. Establishment or modification of child support;
 - c. Determination of parentage; or
 - d. ~~Location of~~ To locate obligors or their assets.

SECTION 2. AMENDMENT. Section 14-12.2-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-12.2-07. (204) Simultaneous proceedings in another state.

1. ~~¶ A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state; a tribunal of this state may exercise jurisdiction to establish a support order only if:~~
 - a. The petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state;
 - b. The contesting party timely challenges the exercise of jurisdiction in the other state; and
 - c. If relevant, this state is the home state of the child.
2. ~~¶ A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state; a tribunal of this state may not exercise jurisdiction to establish a support order if:~~
 - a. The petition or comparable pleading in the other state is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;
 - b. The contesting party timely challenges the exercise of jurisdiction in this state; and
 - c. If relevant, the other state is the home state of the child.

SECTION 3. AMENDMENT. Section 14-12.2-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-12.2-08. (205) Continuing, exclusive jurisdiction.

1. A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a child support order:

- a. As long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or
 - b. Until ~~each individual party has~~ all of the parties who are individuals have filed written ~~consent~~ consents with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.
2. A tribunal of this state issuing a child support order consistent with the law of this state may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to the Uniform Interstate Family Support Act or a law substantially similar to this chapter.
 3. If a child support order of this state is modified by a tribunal of another state pursuant to the Uniform Interstate Family Support Act or a law substantially similar to this chapter, a tribunal of this state loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this state, and may only:
 - a. Enforce the order that was modified as to amounts accruing before the modification;
 - b. Enforce nonmodifiable aspects of that order; and
 - c. Provide other appropriate relief for violations of that order which occurred before the effective date of the modification.
 4. A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child support order pursuant to the Uniform Interstate Family Support Act or a law substantially similar to this chapter.
 5. A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.
 6. A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this state may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

SECTION 4. AMENDMENT. Section 14-12.2-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-12.2-10. (207) Recognition of controlling child support orders order.

1. If a proceeding is brought under this chapter and only one tribunal has issued a child support order, the order of that tribunal controls and must be so recognized.
2. If a proceeding is brought under this chapter, and ~~one~~ two or more child support orders have been issued ~~in~~ by tribunals of this state or another

state with regard to ~~an~~ the same obligor and ~~a~~ child, a tribunal of this state shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

- a. ~~If only one tribunal has issued a child support order, the order of that tribunal must be recognized.~~
- b. ~~If two or more tribunals have issued child support orders for the same obligor and child, and only one of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal controls and must be so recognized.~~
- e. b. ~~If two or more tribunals have issued child support orders for the same obligor and child, and more than one of the tribunals would have continuing, exclusive jurisdiction under this chapter, an order issued by a tribunal in the current home state of the child controls and must be so recognized, but if an order has not been issued in the current home state of the child, the order most recently issued controls and must be so recognized.~~
- e. c. ~~If two or more tribunals have issued child support orders for the same obligor and child, and none of the tribunals would have continuing, exclusive jurisdiction under this chapter, the tribunal of this state ~~may~~ having jurisdiction over the parties shall issue a child support order, which controls and must be so recognized.~~
3. If two or more child support orders have been issued for the same obligor and child and if the obligor or the individual obligee resides in this state, a party may request a tribunal of this state to determine which order controls and must be so recognized under subsection 2. The request must be accompanied by a certified copy of every support order in effect. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.
- ~~2.~~ 4. The tribunal that ~~has~~ issued ~~an~~ the controlling order ~~recognized~~ under subsection 1, 2, or 3 is the tribunal ~~having~~ that has continuing, exclusive jurisdiction under section 14-12.2-08.
5. A tribunal of this state which determines by order the identity of the controlling order under subdivision a or b of subsection 2 or which issues a new controlling order under subdivision c of subsection 2 shall state in that order the basis upon which the tribunal made its determination.
6. Within thirty days after issuance of an order determining the identity of the controlling order, the party obtaining the order shall file a certified copy of it with each tribunal that had issued or registered an earlier order of child support. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

SECTION 5. AMENDMENT. Section 14-12.2-16 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-12.2-16. (304) Duties of initiating tribunal.

1. Upon the filing of a petition authorized by this chapter, an initiating tribunal of this state shall forward three copies of the petition and its accompanying documents:
 4. a. To the responding tribunal or appropriate support enforcement agency in the responding state; or
 2. b. If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that ~~the petitions and documents~~ they be forwarded to the appropriate tribunal and that receipt be acknowledged.
2. If a responding state has not enacted the Uniform Interstate Family Support Act or a law or procedure substantially similar to this chapter, a tribunal of this state may issue a certificate or other document and make findings required by the law of the responding state. If the responding state is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding state.

SECTION 6. AMENDMENT. Subsections 1 and 5 of section 14-12.2-17 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly under subsection 3 of section 14-12.2-13, it shall cause the petition or pleading to be filed and notify the petitioner ~~by first-class mail~~ where and when it was filed.
5. If a responding tribunal of this state issues an order under this chapter, the tribunal shall send a copy of the order ~~by first-class mail~~ to the petitioner and the respondent and to the initiating tribunal, if any.

SECTION 7. AMENDMENT. Section 14-12.2-18 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-12.2-18. (306) Inappropriate tribunal. If a petition or comparable pleading is received by an inappropriate tribunal of this state, it shall forward the pleading and accompanying documents to an appropriate tribunal in this state or another state and notify the petitioner ~~by first-class mail~~ where and when the pleading was sent.

SECTION 8. AMENDMENT. Subsection 2 of section 14-12.2-19 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A support enforcement agency that is providing services to the petitioner as appropriate shall:
 - a. Take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent;
 - b. Request an appropriate tribunal to set a date, time, and place for a hearing;

- c. Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;
- d. Within two ~~business~~ days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written notice from an initiating, responding, or registering tribunal, send a copy of the notice ~~by first-class mail~~ to the petitioner;
- e. Within two ~~business~~ days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written communication from the respondent or the respondent's attorney, send a copy of the communication ~~by first-class mail~~ to the petitioner; and
- f. Notify the petitioner if jurisdiction over the respondent cannot be obtained.

SECTION 9. AMENDMENT. Section 14-12.2-33 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-12.2-33. (501) ~~Recognition~~ Employer's receipt of income-withholding order of another state.

1. An income-withholding order issued in another state may be sent ~~by first-class mail~~ to the person or entity defined as the obligor's employer under section 14-09-09.10 without first filing a petition or comparable pleading or registering the order with a tribunal of this state. ~~Upon receipt of the order, the employer shall:~~
 - a. ~~Treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this state;~~
 - b. ~~Immediately provide a copy of the order to the obligor; and~~
 - c. ~~Distribute the funds as directed in the withholding order.~~
2. An obligor may contest the validity or enforcement of an ~~income-withholding order issued in another state in the same manner as if the order had been issued by a tribunal of this state.~~ Section ~~14-12.2-38~~ applies to the contest. The obligor shall give notice of the contest to any support enforcement agency providing services to the obligee and to:
 - a. The person or agency designated to receive payments in the ~~income-withholding order; or~~
 - b. ~~If no person or agency is designated, the obligee.~~

SECTION 10. Sections 14-12.2-33.1, 14-12.2-33.2, 14-12.2-33.3, 14-12.2-33.4, and 14-12.2-33.5 of the North Dakota Century Code are created and enacted as follows:

14-12.2-33.1. (502) Employer's compliance with income-withholding order of another state.

1. Upon receipt of an income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.
2. The employer shall treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this state.
3. Except as otherwise provided by subsection 4 and section 14-12.2-33.2, the employer shall withhold and distribute the funds as directed in the withholding order by complying with the terms of the order which specify:
 - a. The duration and amount of periodic payments of current child support, stated as a sum certain;
 - b. The person or agency designated to receive payments and the address to which the payments are to be forwarded;
 - c. Medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;
 - d. The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and
 - e. The amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.
4. An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:
 - a. The employer's fee for processing an income-withholding order;
 - b. The maximum amount permitted to be withheld from the obligor's income; and
 - c. The times within which the employer must implement the withholding order and forward the child support payment.

14-12.2-33.2. (503) Compliance with multiple income-withholding orders. If an obligor's employer receives multiple income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the multiple orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for multiple child support obligees.

14-12.2-33.3. (504) Immunity from civil liability. An employer who complies with an income-withholding order issued in another state in accordance with this chapter is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

14-12.2-33.4. (505) Penalties for noncompliance. An employer who willfully fails to comply with an income-withholding order issued by another state and

received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

14-12.2-33.5. (506) Contest by obligor.

1. An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state in the same manner as if the order had been issued by a tribunal of this state. Section 14-12.2-38 applies to the contest.
2. The obligor shall give notice of the contest to:
 - a. A support enforcement agency providing services to the obligee;
 - b. Each employer that has directly received an income-withholding order; and
 - c. The person or agency designated to receive payments in the income-withholding order or if no person or agency is designated, to the obligee.

SECTION 11. AMENDMENT. Section 14-12.2-39 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-12.2-39. (605) Notice of registration of order.

1. When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. ~~Notice must be given by first-class, certified, or registered mail or by any means of personal service authorized by the law of this state.~~ The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.
2. The notice must inform the nonregistering party:
 - a. That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;
 - b. That a hearing to contest the validity or enforcement of the registered order must be requested within twenty days after ~~the date of mailing or personal service of the notice;~~
 - c. That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and
 - d. Of the amount of any alleged arrearages.
3. Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to the income-withholding requirements of chapter 14-09.

SECTION 12. AMENDMENT. Subsections 1 and 3 of section 14-12.2-40 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within twenty days after ~~the date of mailing or personal service~~ of notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to section 14-12.2-41.
3. If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties ~~by first-class mail~~ of the date, time, and place of the hearing.

SECTION 13. AMENDMENT. Section 14-12.2-45 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-12.2-45. (611) Modification of child support order of another state.

1. After a child support order issued in another state has been registered in this state, the responding tribunal of this state may modify that order only if; section 14-12.2-46.1 does not apply and after notice and hearing; it finds that:
 - a. The following requirements are met:
 - (1) The child, the individual obligee, and the obligor do not reside in the issuing state;
 - (2) A petitioner who is a nonresident of this state seeks modification; and
 - (3) The respondent is subject to the personal jurisdiction of the tribunal of this state; or
 - b. ~~An individual party or the~~ The child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this state and all of the individual parties who are individuals have filed a written consent consents in the issuing tribunal providing that for a tribunal of this state may to modify the support order and assume continuing, exclusive jurisdiction over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under the Uniform Interstate Family Support Act, the consent otherwise required of an individual residing in this state is not required for the tribunal to assume jurisdiction to modify the child support order.
2. Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.

3. A tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state. If two or more tribunals have issued child support orders for the same obligor and child, the order that controls and must be so recognized under section 14-12.2-10 establishes the aspects of the support order which are nonmodifiable.
4. On issuance of an order modifying a child support order issued in another state, a tribunal of this state becomes the tribunal of having continuing, exclusive jurisdiction.
5. ~~Within thirty days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal which had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows that earlier order has been registered.~~

SECTION 14. AMENDMENT. Section 14-12.2-46 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-12.2-46. (612) Recognition of order modified in another state. A tribunal of this state shall recognize a modification of its earlier child support order by a tribunal of another state which assumed jurisdiction pursuant to the Uniform Interstate Family Support Act or a law substantially similar to this chapter and, upon request, except as otherwise provided in this chapter, shall:

1. Enforce the order that was modified only as to amounts accruing before the modification;
2. Enforce only nonmodifiable aspects of that order;
3. Provide other appropriate relief only for violations of that order which occurred before the effective date of the modification; and
4. Recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

SECTION 15. Sections 14-12.2-46.1 and 14-12.2-46.2 of the North Dakota Century Code are created and enacted as follows:

14-12.2-46.1. (613) Jurisdiction to modify child support order of another state when individual parties reside in this state.

1. If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.
2. A tribunal of this state exercising jurisdiction under this section shall apply the provisions of sections 14-12.2-01 through 14-12.2-12, sections 14-12.2-35 through 14-12.2-46.2, and the procedural and substantive law of this state to the proceeding for enforcement or modification. Sections 14-12.2-13 through 14-12.2-34 and sections 14-12.2-47, 14-12.2-48, and 14-12.2-49 do not apply.

14-12.2-46.2. (614) Notice to issuing tribunal of modification. Within thirty days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction.

SECTION 16. AMENDMENT. Section 14-12.2-47 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-12.2-47. (701) Proceeding to determine parentage.

1. A tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought under this chapter or a law or procedure substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act to determine that the petitioner is a parent of a particular child or to determine that a respondent is a parent of that child.
2. In a proceeding to determine parentage, a responding tribunal of this state shall apply section 14-12.2-28 ~~and~~, chapter 14-17, and the rules of this state on choice of law.

SECTION 17. UNIFORMITY OF APPLICATION AND CONSTRUCTION. Chapter 14-12.2 must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the chapter among states enacting it.

SECTION 18. SHORT TITLE. Chapter 14-12.2 may be cited as the Uniform Interstate Family Support Act.

SECTION 19. SEVERABILITY CLAUSE. If any provision of chapter 14-12.2 or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of the chapter are severable.

Approved March 26, 1997
Filed March 26, 1997

CHAPTER 153**SENATE BILL NO. 2281**

(Senator W. Stenehjem)

PATERNITY PROCEEDING COUNSEL APPOINTMENT

AN ACT to amend and reenact subsection 1 of section 14-17-18 of the North Dakota Century Code, relating to appointment of counsel in paternity proceedings; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 14-17-18 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. At the pretrial hearing and in further proceedings, any party may be represented by counsel. ~~The court shall appoint counsel to represent the interests of any party who is financially unable to obtain counsel in proceedings leading to the initial judicial determination of parentage under this chapter.~~

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

Approved April 4, 1997

Filed April 4, 1997

EDUCATION

CHAPTER 154

HOUSE BILL NO. 1381

(Representative Poolman)

(Senator St. Aubyn)

HIGHER EDUCATION GRAND FORKS LAND CONVEYANCE

AN ACT to authorize the state board of higher education to convey certain land in Grand Forks, North Dakota; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Transfer of land authorized.

1. The state board of higher education may convey the land described in this section for the price and on the terms as determined by the state board of higher education. The land to be conveyed is known as the North Dakota delta upsilon fraternity house and the land upon which it is situated is described as follows:

Beginning at the Northeast corner of Lot 1, Block 13 of said University Place Addition; thence north along the west line of Princeton Street, a distance of 100 feet to a point; thence deflecting left at an angle of 89 degrees 59'08" in a westerly direction, a distance of 292.98 feet to a point; thence deflecting left at an angle of 143 degrees 24'30" in a southeasterly direction, a distance of 152.39 feet to a point; thence deflecting right at an angle of 53 degrees 05' in a southerly direction, a distance of 9.16 feet to a point on the north line of said Lot 1, Block 13; thence deflecting left at an angle of 89 degrees 40'30" in a easterly direction, a distance of 170.60 feet to the point of beginning.

2. The provisions of sections 54-01-05.2 and 54-01-05.5 do not apply to the transfer authorized by this Act.

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

Approved March 25, 1997
Filed March 26, 1997

CHAPTER 155

HOUSE BILL NO. 1312

(Representatives Martinson, Svedjan, Wentz, Keiser)
(Senators Robinson, St. Aubyn)

HIGHER EDUCATION BOARD COMPENSATION AND LOANS

AN ACT to create and enact a new section to chapter 15-10 of the North Dakota Century Code, relating to authorization for board of higher education institutions to borrow from the Bank of North Dakota; and to amend and reenact sections 15-10-08 and 44-04-18.4 of the North Dakota Century Code, relating to compensation of state board of higher education members and confidentiality of information regarding grants and contracts of institutions of higher education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ **SECTION 1. AMENDMENT.** Section 15-10-08 of the North Dakota Century Code is amended and reenacted as follows:

15-10-08. Compensation of board members - Expenses - Legislative appropriations. Each appointive member of the state board of higher education shall, except the student member, is entitled to receive fifty dollars per day compensation per day in the same amount provided for members of the legislative council for the time each calendar day actually spent devoted to the duties of his office, and; in addition, shall receive his necessary expenses in the same manner and amounts as other state officials for attending meetings and performing other functions of his office. The legislative assembly shall provide adequate funds to carry out the functions and duties of the board. The compensation and expense payments provided by this section are retroactive to January 1, 1977.

SECTION 2. A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

Loans from Bank of North Dakota. Institutions under the board of higher education are authorized to borrow, and the Bank of North Dakota is authorized to loan to those institutions, amounts not to exceed ninety percent of the value of an institution's certificate of deposit held by the Bank. The term of the loan may not exceed the term of the certificate of deposit offered as security for the loan. The loans are subject to such additional terms and conditions as may be established by the Bank.

¹ Section 15-10-08 was also amended by section 11 of Senate Bill No. 2052, chapter 432.

² **SECTION 3. 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, method, technique, or process supplied to or prepared by any state agency, institution, department, or board which is the subject of efforts by the supplying 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, 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 which an employee, institution, or the board 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~~

² Section 44-04-18.4 was also amended by section 8 of Senate Bill No. 2228, chapter 381.

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 noneconfidential 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.

Approved April 9, 1997
Filed April 10, 1997

CHAPTER 156

HOUSE BILL NO. 1179

(Representative Dorso)
(Senator G. Nelson)

BUDGET SECTION APPROVAL OF CAMPUS IMPROVEMENTS

AN ACT to amend and reenact section 15-10-12.1 of the North Dakota Century Code, relating to budget section approval of the acceptance of buildings and campus improvements at the institutions of higher education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-10-12.1 of the North Dakota Century Code is amended and reenacted as follows:

15-10-12.1. Acceptance of buildings and campus improvements - Approval of budget section. The state board of higher education may, with the approval of the budget section of the legislative council, authorize the use of land under the control of the board and construct buildings and campus improvements thereon which are financed by donations, gifts, grants, and bequests. The budget section approval must include a specific dollar limit for each building or campus improvement project. The budget section may establish guidelines regarding the types of gifts for minor improvements which do not require the approval of the budget section based upon the financial impact of such construction projects upon the state of North Dakota. The state board of higher education may, with the approval of the budget section, authorize the sale of any real property or buildings which an institution of higher learning has received by gift or bequest. The budget section may prescribe such conditions for the sale of the property as it deems necessary, including, but not limited to, requiring an appraisal and the advertisement for bids.

Approved April 4, 1997
Filed April 4, 1997

CHAPTER 157

SENATE BILL NO. 2336

(Senators Holmberg, Freborg, Grindberg)
(Representatives R. Kelsch, Monson)

SUPERINTENDENT OF PUBLIC INSTRUCTION RULES

AN ACT to provide for the expiration of certain rules adopted by the superintendent of public instruction; and to amend and reenact sections 15-21-04.1, 15-21-07, 15-21-07.1, 15-21-07.2, 15-21.1-03, 15-21.1-04, 15-45-03, and subsection 1 of section 28-32-01 of the North Dakota Century Code, relating to rulemaking by the superintendent of public instruction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-21-04.1 of the North Dakota Century Code is amended and reenacted as follows:

15-21-04.1. Superintendent may adopt accreditation ~~standards~~ rules - Compliance not mandatory. The superintendent of public instruction has the authority to adopt ~~standards~~ rules for the accreditation of the public and private schools of the state. Any public or private school which complies with ~~such standards~~ the rules must be deemed to be an accredited school.

SECTION 2. AMENDMENT. Section 15-21-07 of the North Dakota Century Code is amended and reenacted as follows:

15-21-07. Duties - To advise with county superintendents of schools and school boards - Appeals. The superintendent of public instruction shall counsel with and advise county superintendents of schools and school boards upon all matters involving the welfare of schools; and on request; ~~he~~ shall give them written answers to all questions concerning school laws. ~~He~~ The superintendent of public instruction shall decide all appeals from decisions of county superintendents of schools, and, for the consideration of such appeals, ~~he~~ the superintendent of public instruction may require affidavits, verified statements, or testimony under oath as to the facts in issue, as provided in chapter 28-32. As an administrative agency under chapter 28-32 ~~and following provisions thereof~~, ~~he~~, the superintendent of public instruction shall ~~prescribe, and cause to be enforced,~~ adopt rules of practice and regulations pertaining to the hearing and determination of appeals and ~~such rules and regulations as may be necessary~~ to render effective the school laws of the state.

SECTION 3. AMENDMENT. Section 15-21-07.1 of the North Dakota Century Code is amended and reenacted as follows:

15-21-07.1. Agreements with federal agencies and school districts. The superintendent of public instruction in order to carry out the purposes of any federal statutes pertaining to public education may enter into agreements with any agency of the federal government and with the school board of any school district in the state, may make agreements with the federal government for and ~~in~~ on behalf of the public school districts of the state and may adopt ~~necessary~~ rules of administration to ensure the proper and efficient operation of ~~such~~ the agreements and to ~~comply with such conditions as may be necessary~~ to obtain the full benefits of ~~such~~ the federal statutes. Provided, however, that such contracts, agreements, or

arrangements shall in no way impair the rights, powers, duties, or authority of local school districts and school boards in the management and control of their local schools.

SECTION 4. AMENDMENT. Section 15-21-07.2 of the North Dakota Century Code is amended and reenacted as follows:

15-21-07.2. ~~Regulations prescribed~~ Rules for agreements with federal agencies. All contracts, agreements, or arrangements affecting public tax supported schools or school systems under the supervision of the state superintendent of public instruction which may be made and entered into with agencies of the federal government must be entered into in accordance with ~~regulations~~ rules prescribed by the superintendent of public instruction ~~and in no other manner~~.

³ **SECTION 5. AMENDMENT.** Section 15-21.1-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-21.1-03. Grants - Design - Coordination. The state superintendent or designated staff ~~must establish guidelines~~ shall adopt rules for the school districts to implement a chemical abuse prevention program in North Dakota schools. The ~~guidelines~~ rules may ~~reflect~~ include the following ~~and other criteria~~ as may be appropriate:

1. Community involvement through a ~~citizens~~ citizens' advisory committee already in place or appointed by the school board.
2. Assessment of the current level of services and resources available within a community.
3. Assessment of student and staff needs.
4. Coordination of activities with public and private agencies whenever possible.
5. Development of an appropriate plan for implementation based upon assessed needs.
6. Evaluation of programs.
7. The budget to support implementation.

Based upon the criteria developed by the department of public instruction, the superintendent shall review the proposal and grant funds to the school districts.

The school districts may apply for funds independently or form a consortium for a more cost-effective program. The funding will be based upon the criteria and the merit of each program proposal.

The department shall develop a comprehensive plan to address the coordination of services with existing agencies. These agencies may include the

³ Section 15-21.1-03 was also amended by section 1 of House Bill No. 1130, chapter 158.

department of human services, state department of health, department of transportation, and law enforcement agencies. The purpose of coordination is to develop ~~state guidelines~~ rules and identify resources.

SECTION 6. AMENDMENT. Section 15-21.1-04 of the North Dakota Century Code is amended and reenacted as follows:

15-21.1-04. Staff. The superintendent shall employ one permanent professional staff person for the purpose of coordinating this program. The project coordinator shall:

1. Develop ~~guidelines~~ rules in consultation with other private and public agencies.
2. Disseminate ~~guidelines~~ rules to local communities.
3. Provide technical assistance to communities through schools in planning and implementation of a chemical abuse and prevention program.
4. Collect pertinent data for reporting and program evaluation.
5. Facilitate coordination of this program with prevention and educational programs presently being conducted by other state agencies.
6. Provide written evaluation to the superintendent for a report to the ~~state legislature~~ legislative assembly.
7. Serve as a resource specialist to schools in the areas of policy, development, instructional programs, and identifying model programs.

SECTION 7. AMENDMENT. Section 15-45-03 of the North Dakota Century Code is amended and reenacted as follows:

15-45-03. Accreditation ~~standards~~ rules. The superintendent of public instruction may adopt ~~standards~~ rules for the accreditation of all kindergartens operated in this state. All kindergartens that comply with these ~~standards~~ rules are accredited kindergartens.

⁴ **SECTION 8. AMENDMENT.** Subsection 1 of section 28-32-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, or employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located

⁴ Section 28-32-01 was also amended by section 1 of Senate Bill No. 2398, chapter 449; section 7 of Senate Bill No. 2033, chapter 182; section 1 of House Bill No. 1042, chapter 278; section 6 of Senate Bill No. 2045, chapter 115; section 1 of House Bill No. 1183, chapter 451; section 2 of House Bill No. 1158, chapter 277; and section 24 of Senate Bill No. 2046, chapter 51.

within or subordinate to an administrative agency shall be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:

- a. The office of management and budget except with respect to rules relating to the state building code as authorized or required under section 54-21.3-03, rules relating to the Model Energy Code as required under section 54-21.2-03, rules relating to the central personnel system as authorized under section 54-44.3-07, rules relating to state purchasing practices as required under section 54-44.4-04, rules relating to records management as authorized or required under chapter 54-46, and rules relating to the central microfilm unit as authorized under chapter 54-46.1.
- b. The adjutant general with respect to the division of emergency management.
- c. The council on the arts.
- d. The state auditor.
- e. The department of economic development and finance.
- f. The dairy promotion commission.
- g. The education factfinding commission.
- h. The educational telecommunications council.
- i. The board of equalization.
- j. The board of higher education.
- k. The Indian affairs commission.
- l. The industrial commission with respect to the activities of the Bank of North Dakota, the North Dakota housing finance agency, the North Dakota municipal bond bank, and the North Dakota mill and elevator association.
- m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under chapter 54-23.4.
- n. The board of pardons.
- o. The parks and recreation department.
- p. The parole board.
- q. ~~The superintendent of public instruction, except with respect to rules prescribed under section 15-21-07 and rules implementing chapter 15-22.~~
- r. The state fair association.

- s. r. The state department of health with respect to the state toxicologist.
- t. s. The board of university and school lands except with respect to activities under chapter 47-30.1.
- u. t. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.
- v. u. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.
- w. v. The secretary of state with respect to rules adopted for the presidential preference contest under section 16.1-11-02.2.

SECTION 9. Expiration of existing rules. Any rule adopted by the superintendent of public instruction in a manner other than that set forth in chapter 28-32 is ineffective after October 31, 1999. For purposes of this section, "rule" includes any regulation, standard, guideline, statement, or policy that has the effect of law or which has either direct or indirect financial consequences for noncompliance.

Approved March 21, 1997
Filed March 21, 1997

CHAPTER 158

HOUSE BILL NO. 1130

(Education Committee)

(At the request of the Superintendent of Public Instruction)

SCHOOL CHEMICAL ABUSE PREVENTION GRANTS

AN ACT to amend and reenact section 15-21.1-03 of the North Dakota Century Code, relating to chemical abuse prevention program grants to school districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁵ **SECTION 1. AMENDMENT.** Section 15-21.1-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-21.1-03. Grants - Design - Coordination. The state superintendent or designated staff ~~must~~ shall establish guidelines for ~~the~~ school districts to implement a chemical abuse prevention program in North Dakota schools. The guidelines may reflect the following and other criteria as may be appropriate:

1. Community involvement through a citizens advisory committee already in place or appointed by the school board.
2. Assessment of the current level of services and resources available within a community.
3. Assessment of student and staff needs.
4. Coordination of activities with public and private agencies whenever possible.
5. Development of an appropriate plan for implementation based upon assessed needs.
6. Evaluation of programs.
7. The budget to support implementation.

Based upon the criteria developed by the department of public instruction and when funds have been appropriated or otherwise made available to implement the program, the superintendent shall review ~~the proposal~~ proposals and grant funds to the school districts.

The school districts may apply for funds independently or form a consortium for a more cost-effective program. The funding ~~will~~ must be based upon the criteria and the merit of each program proposal.

⁵ Section 15-21.1-03 was also amended by section 5 of Senate Bill No. 2336, chapter 157.

The department shall develop a comprehensive plan to address the coordination of services with existing agencies. These agencies may include the department of human services, state department of health, department of transportation, and law enforcement agencies. The purpose of coordination is to develop state guidelines and identify resources.

Approved February 11, 1997

Filed February 11, 1997

CHAPTER 159

HOUSE BILL NO. 1154

(Education Committee)

(At the request of the Superintendent of Public Instruction)

SCHOOL DISTRICT ANNEXATION, REORGANIZATION, AND DISSOLUTION

AN ACT to create and enact sections 15-27.3-07.5 and 15-27.3-13.5 of the North Dakota Century Code, relating to voting on the issuance of bonds by school districts contemplating reorganization; and to amend and reenact sections 15-27.1-10, 15-27.1-11, subsection 2 of section 15-27.2-01, sections 15-27.3-10, 15-27.3-12, 15-27.3-20, 15-27.4-02, and 15-47-39 of the North Dakota Century Code, relating to the annexation, reorganization, and dissolution of school districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-27.1-10 of the North Dakota Century Code is amended and reenacted as follows:

15-27.1-10. Transfer of land upon annexation ~~or~~, reorganization, or dissolution. The legal title to all land owned by an original school district which has been annexed to another district ~~or~~, included in a reorganized district, or dissolved which is not subject to a possibility of reverter or right of reentry if title is held by other than the original district, vests in the school board of the reorganized school district or the district to which the property is annexed or attached upon approval of the reorganization proposal by the electors or upon orders of the county superintendent of schools or the reorganization committee, as the case may be. If the reorganized district or district to which the property is annexed or attached includes less than the whole of the former district, legal title to the land of the former district vests in the school board of the district in which the land is situated after reorganization ~~or~~, chapter 15-27.2 annexation, or chapter 15-27.4 dissolution. A certificate prepared by the county superintendent of schools of the county wherein the land in question is located, stating the legal description of the land involved, and the fact that the school district formerly owning the land has become either annexed, attached, or reorganized with another school district, may be recorded in the office of the register of deeds of the county in which the land is located.

⁶ **SECTION 2. AMENDMENT.** Section 15-27.1-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-27.1-11. Reorganization or dissolution of school district not operating a school - Transportation. Any school district that, for a period of one year, does not operate either an elementary or high school, must become by the end of that year, through the process of reorganization or dissolution, part of a school district operating an approved elementary or high school. Any student who resides within a

⁶ Section 15-27.1-11 was also amended by section 1 of House Bill No. 1131, chapter 160.

school district which is reorganized with another district or districts pursuant to this section, or dissolved pursuant to this section and section 15-27.4-01, whose school district has been sending the students to a school district in a bordering state, county, or district, because of proximity or terrain, ~~shall be permitted to~~ may attend or continue to attend school in the district in the bordering state, county, or district, subject to the provisions of section 15-40.2-09. The students residing within a school district that is reorganized with another district or districts pursuant to this section, or dissolved pursuant to this section and section 15-27.4-01 must be provided transportation in the same manner transportation is provided to students in the school district the nonoperating district is attached to.

~~The county committee of the county encompassing the major portion of any~~ If a school district affected by this section; which school district does ~~has~~ not reorganize with an operating school district been reorganized or dissolved within the time limit prescribed in this section, the school district shall dissolve be dissolved and attach the nonoperating school district attached to an operating school district in accordance with chapter 15-27.4.

This section does not apply to school districts established pursuant to chapter 15-27.5.

SECTION 3. AMENDMENT. Subsection 2 of section 15-27.2-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The annexation petition must:
 - a. Be obtained from the county superintendent;
 - b. Identify all of the territory to be annexed before it is circulated. The territory must constitute one land area, with no territory identified in the petition separate from other territory identified in the petition;
 - c. Identify one student who ~~resides~~ lives in the area to be annexed and who will attend a public school in the receiving school district during the school year following ~~approval~~ the effective date of the ~~petition~~ annexation if it is approved by the state board;
 - d. Be signed in the presence of the carrier of the petition; and
 - e. Be submitted to the county superintendent of the county in which the majority of land identified in the petition is located.

SECTION 4. Section 15-27.3-07.5 of the North Dakota Century Code is created and enacted as follows:

15-27.3-07.5. Vote on issuance of bonds when voting on reorganization proposal.

1. If the reorganization proposal contemplates the issuance of bonds pursuant to chapter 21-03, the question of the issuance of the bonds may be voted on at the same election as that for which approval of the reorganization is sought, provided:

- a. Each of the school boards involved in the reorganization adopts, by a majority vote, an identical initial resolution required by chapter 21-03; and
 - b. All of the terms of chapter 21-03 are complied with, except that if there is a conflict with section 15-27.3-08 regarding how the election will proceed, the terms of section 15-27.3-08 prevail.
2. If the reorganization is not approved, the result of the vote on the issuance of bonds is ineffective.

SECTION 5. AMENDMENT. Section 15-27.3-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-27.3-10. Transportation provisions effective until changed by majority vote. Any provision in a reorganization proposal relating to the transportation of students ~~effective before August 4, 1995,~~ must remain in effect until changed in accordance with section 15-27.3-19.

SECTION 6. AMENDMENT. Section 15-27.3-12 of the North Dakota Century Code is amended and reenacted as follows:

15-27.3-12. School boards in reorganized and original districts. After the establishment of any new school district, the school board for the new school district must be elected at the regular annual school district election or at a special election called by the county superintendent of schools for that purpose. The first election to elect a school board in a newly reorganized district is governed by chapter 15-28. Members of school boards elected in the newly reorganized districts may not enter upon the duties of office until the time specified in section 15-27.3-15 except as provided by ~~section~~ sections 15-27.3-13 and 15-27.3-13.5. School boards in original school districts included within a reorganized district continue and remain in existence until the time specified in section 15-27.3-15 at which time the new school board elected for the newly reorganized district as provided in this section becomes the governing body of ~~such~~ the school districts. Prior to the completion of the reorganization of any school district under this chapter, the existing school board of any school district may not contract or place the district under any obligation, except upon the recommendation of the county committee. Subsequent annual elections in the school district are governed by the laws pertaining to such elections.

SECTION 7. Section 15-27.3-13.5 of the North Dakota Century Code is created and enacted as follows:

15-27.3-13.5. Board may proceed in accordance with chapter 21-03. The school board for a new school district established pursuant to this chapter may, before the effective date of the reorganization, proceed in accordance with chapter 21-03 for the issuance of bonds for purposes specified in that chapter if the issuance of the bonds is contemplated by the approved reorganization proposal.

SECTION 8. AMENDMENT. Section 15-27.3-20 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-27.3-20. Powers of school board in reorganized district - Exceptions. After five years from the effective date of the reorganization proposal, the school board of a reorganized district ~~shall~~ may exercise the powers granted to a school board by section 15-29-08 or any other provisions of law regardless of limitations contained in the reorganization proposal. ~~This~~ However, this section does not authorize the

school board of a reorganized district to ~~exercise any powers prohibited or limited by change geographic voting areas except in accordance with section 15-27.3-17 or 15-27.3-19 nor does it authorize a change in transportation except in accordance with section 15-27.3-10.~~

SECTION 9. AMENDMENT. Section 15-27.4-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-27.4-02. Notice of hearing - Order of attachment - Joint county action.

1. The county superintendent of the county in which the administrative headquarters of the dissolving school district is located, upon order of the county committee, shall notify the business manager of each school district adjoining any district which is to be dissolved pursuant to section 15-27.4-01, and any unorganized territory recommended for attachment as provided by that section, that a hearing will be held and the time and the place of the hearing by the county committee, for the purpose of determining to which school district or districts the dissolved or unorganized territory will be attached.
2. The county committee shall receive testimony at the hearing for the purpose of determining and considering the factors listed in subsection 3 of section 15-27.2-04 as they relate to the dissolution proceeding. At the hearing, the school district to be dissolved may propose a particular manner of dissolution.
3. After the hearing, the county committee shall by resolution order the district dissolved and its territory attached, or the unorganized territory attached, to one or more adjoining school districts in such manner as will, in its judgment, provide the best educational opportunities for ~~pupils~~ students of the public schools and the wisest use of public funds for the support of the public school system in the school districts and attached territory. The county committee may not order the attachment of any territory unless a minor resides within the boundaries of the territory to be attached.
4. The district to be dissolved must be attached to a contiguous operating school district.
5. The order becomes effective July first following the date of the order or resolution and after approval by the state board, unless another effective date is provided for by the county committee, as provided in section 15-27.4-01.
6. If that portion of the order providing for attachment of the dissolved or unorganized territory is rendered ineffective or suspended for any reason, the portion of the order providing for the dissolution is suspended until such time as the attachment becomes effective.
7. ~~If any of the adjoining district is situated wholly or partly in a county other than that which included the district to be dissolved or the unorganized territory affected, any order attaching territory to the adjoining school district becomes effective only upon the adoption of a concurring resolution by the county committee of the other county in which it is situated.~~

8. If the school district to be dissolved is located in more than one county, the county committees of the counties in which twenty-five percent or more of the taxable valuation of the dissolving school district is located, shall hear the dissolution. After the hearing, if a majority of the county committees hearing the dissolution cannot agree upon an order attaching the territory to adjoining districts, the county superintendent of the county in which the majority administrative headquarters of the dissolving school district being dissolved is located, shall submit the dissolution and attachment to the state board, and in such instance the state board shall, after holding a hearing such as the one described in subsections 1 and 2, dissolve and attach the district to be dissolved, or the unorganized territory, in the manner as will, in its judgment, provide the best educational opportunities for pupils students of the public school system in the school districts and attached territories.
9. ~~The action of the state board has the same effect as approval by all county committees.~~

SECTION 10. AMENDMENT. Section 15-47-39 of the North Dakota Century Code is amended and reenacted as follows:

15-47-39. Agreements between school district and school district of adjoining states - Provisions - Election - Tax levy. Notwithstanding any other ~~provisions~~ provision of law, subject to the provisions of this section, the board of any school district with boundaries touching upon a school district in another state may enter into a written agreement with the board of such school district for the joint operation and maintenance of school facilities and activities in either district. ~~Such~~ The agreement must be submitted to the superintendent of public instruction and, in approving or disapproving ~~such~~ the agreements, must take into consideration the enrollment, valuation of the district and future possibilities of the district and, if approved and endorsed by ~~him~~ the superintendent of public instruction, must be submitted to the electorate of the school district at any annual election or at a special election. There must be published by the school board in a newspaper having general circulation within the district, at least fourteen days next preceding ~~such~~ the election, a statement of the purpose of the election and the terms of the agreement. The question on the ballot must be:

Shall the proposed agreement between this school district and school district number _____ in _____ County, state of _____, as approved by the superintendent of public instruction by endorsement dated _____ be executed?

Yes _____
No _____

Upon approval by the electorate, the board of the school district may levy and collect taxes to carry out the provisions of the agreement pursuant to chapters 15-48 and 57-16 and sections 57-15-13 and 57-15-14. In the event that a school district which has entered into an agreement with an out-of-state district is ~~annexed~~ dissolved and attached to or reorganized into another school district, the school board of the attaching or reorganized ~~or annexing~~ district shall have all powers, duties, and responsibilities of the board of the district which executed the agreement in effect at the time of the ~~annexation~~ dissolution or reorganization.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 160

HOUSE BILL NO. 1131

(Education Committee)

(At the request of the Superintendent of Public Instruction)

OUT-OF-STATE SCHOOL ATTENDANCE

AN ACT to amend and reenact section 15-27.1-11, subsection 1 of section 15-40.2-01, sections 15-40.2-09, and 15-40.2-10 of the North Dakota Century Code, relating to attendance of students in out-of-state schools.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁷ **SECTION 1. AMENDMENT.** Section 15-27.1-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-27.1-11. Reorganization or dissolution of school district not operating a school - Transportation. Any school district that, for a period of one year, does not operate either an elementary or high school, must become by the end of that year, through the process of reorganization or dissolution, part of a school district operating an approved elementary or high school. ~~Any student who resides within a school district which is reorganized with another district or districts pursuant to this section, or dissolved pursuant to this section and section 15-27.4-01, whose school district has been sending the students to a school district in a bordering state, county, or district, because of proximity or terrain, shall be permitted to attend or continue to attend school in the district in the bordering state, county, or district, subject to the provisions of section 15-40.2-09.~~ The students residing within a school district that is reorganized with another district or districts pursuant to this section, or dissolved pursuant to this section and section 15-27.4-01 must be provided transportation in the same manner transportation is provided to students in the school district the nonoperating district is attached to.

The county committee of the county encompassing the major portion of any school district affected by this section, which school district does not reorganize with an operating school district within the time limit prescribed in this section, shall dissolve and attach the nonoperating school district to an operating school district in accordance with chapter 15-27.4.

This section does not apply to school districts established pursuant to chapter 15-27.5.

⁸ **SECTION 2. AMENDMENT.** Subsection 1 of section 15-40.2-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

⁷ Section 15-27.1-11 was also amended by section 2 of House Bill No. 1154, chapter 159.

⁸ Section 15-40.2-01 was also amended by section 3 of House Bill No. 1146, chapter 175.

1. The school board of any district may send kindergarten, elementary, or high school pupils into another school district or to an accredited institution ~~of another state~~ when, because of shorter distances and other conveniences, it is to the best interests of the school district to do so, and in such instances the board may pay the tuition of ~~such the~~ pupils to the district or institution to which they are sent. The school board may arrange, and when petitioned to do so by a majority of qualified electors of the district, shall arrange with the school boards of other districts or with the institutions, to send pupils to ~~such the~~ other districts or institutions who can be taught conveniently therein, and for the payment of their tuition and for furnishing and paying for their transportation to and from ~~such the~~ other schools or institutions.

SECTION 3. AMENDMENT. Section 15-40.2-09 of the North Dakota Century Code is amended and reenacted as follows:

15-40.2-09. Attendance in public schools or institutions of bordering states, when permitted - Continuation of attendance ~~when district annexed or reorganized~~ under certain circumstances.

1. Students may attend a school in a bordering state in accordance with section 15-40.2-10 under the following circumstances:
 - a. A student who lives within forty miles [64.37 kilometers] of another state or in a county bordering on another state may, with the approval of the school board, attend a public school or institution in a bordering state; ~~and the school board of the school district within which the student resides may contract with the bordering state for the education of the student.~~
 - b. A student who resides ~~within a school district that is annexed to or reorganized with another district or districts, and who has~~ attended a school district in a bordering state ~~during since, and including,~~ the 1990-91 school year, must be permitted to ~~attend or~~ continue attending school in the district in the bordering state.
 - c. A student ~~who resides within a school district that is annexed to or reorganized with another district or districts, and whose sibling~~ attended an out-of-state school during or before the 1990-91 school year, must be permitted to attend school in the district the sibling attends in the bordering state.
2. If the school board of the district in which the student resides denies a request for attendance and payment of tuition in another state, an appeal may be made to the three-member committee ~~referred to~~ in accordance with section 15-40.2-05. If the three-member committee determines that the student falls within the terms of subdivision b or c of subsection 1, then the student may attend in the bordering state and the school district of residence shall pay the tuition. If the three-member committee determines the student falls within the terms of subdivision a of subsection 1, then the three-member committee shall make its decision using the criteria specified in section 15-40.2-05. For kindergarten students, the three-member committee shall use the criteria specified for elementary students in section 15-40.2-05. Subsection 3 of section 15-40.2-05 does not apply to an appeal for out-of-state attendance and payment of tuition. Regardless of the provisions of this section, if the

school district of residence does not provide for the education of kindergarten students, it may not pay tuition for a kindergarten student to attend school in a bordering state. The decision of the committee regarding payment of tuition for high school, elementary, or kindergarten students may be appealed by the school board, or the parent or guardian of the student, to the state board of public school education, whose decision is final.

3. Foundation aid payments for students attending out-of-state schools must be made to the district of residence. However, the district of the student's residence is entitled to reduce the tuition payment to an out-of-state school by an amount commensurate with the tuition costs the district would be entitled to receive as compensation for a student from the out-of-state district enrolled in its school. Transportation payments for students attending school in a bordering state must be determined as provided in section 15-40.1-16.
4. This section does not require the district of residence to provide student transportation, or payments in lieu thereof, for students attending out-of-state schools.

SECTION 4. AMENDMENT. Section 15-40.2-10 of the North Dakota Century Code is amended and reenacted as follows:

15-40.2-10. Reciprocal master agreements for student attendance in other states - School district agreements - Procedure when bordering state does not enter into reciprocal master agreement.

1. The superintendent of public instruction shall enter into reciprocal master agreements with the appropriate state educational agencies or officers of bordering states in regard to the cost of educating elementary and high school students in the public schools or institutions in such bordering states. A school district may either comply with the terms of the reciprocal master agreement or, upon notification to the superintendent of public instruction, may enter into an agreement with a school district in a bordering state for the education of elementary and high school students. The agreement, which replaces the provisions of the master reciprocal agreement, ~~may~~ must provide for the payment of tuition at an amount agreed upon by the school district of residence and the school district of the bordering state. However, the tuition may not exceed the amount established under the reciprocal master agreement, nor may it be less than the per student foundation aid plus tuition apportionment in the student's school district of residence. For purposes of foundation aid, a student attending school in a bordering state under such an agreement is deemed to be in attendance in the student's school district of residence. The student's school district of residence is liable to the school district in the bordering state for payments as provided in the agreement.

2. If the state educational agency or officer of the bordering state is not authorized to or declines to enter into a reciprocal master agreement with the superintendent of public instruction, a school district may negotiate with a school district of that bordering state an amount of tuition it is willing to pay to that other state's school district for the education of pupils in that state. The school district of residence is liable to the school district in the bordering state for the payments it agrees to make under this subsection. However, if the school district accepts students from that bordering state, it may not agree to accept those nonresident students for an amount of tuition less than the foundation aid plus tuition apportionment it would have received from this state for one of its students in the same grade if its student had been attending in that bordering state.

Approved March 20, 1997

Filed March 20, 1997

CHAPTER 161

HOUSE BILL NO. 1366

(Representative Mickelson)

SCHOOL DISTRICT ANNEXATION PROCEEDINGS

AN ACT to amend and reenact section 15-27.2-04 of the North Dakota Century Code, relating to school district annexation proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-27.2-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-27.2-04. Annexation hearings - Equalization - Notice of hearings.

1. Before detaching territory from one school district or annexing territory to another school district, the county committee shall hold a hearing on the annexation.
2. At least fourteen days prior to the time the hearing is to be held, the committee shall cause notice of such hearing to be published in the official newspaper of the county in which the school district is located, or if no newspaper is published in the county, the notice shall be published in a newspaper in an adjoining county in this state.
3. At such hearing the committee shall consider testimony and documentary evidence with respect to any of the following factors:
 - a. The value and amount of all school property and all bonded and other indebtedness of each school district affected by a change in boundaries.
 - b. The amount of all outstanding indebtedness of each district and that which would constitute an equitable adjustment of all property, assets, debts, and liabilities among the districts involved.
 - c. The taxable valuation of existing districts and the differences in such valuation which would accrue under the proposed annexation.
 - d. The size, geographical features, and boundaries of the districts.
 - e. The number of pupils attending school and the population of the districts.
 - f. The location and condition of the districts' school buildings and their accessibility to affected pupils.
 - g. The location and condition of roads, highways, and natural barriers within the respective districts.
 - h. The school centers where children residing in the districts attend high school.

- i. Conditions affecting the welfare of the pupils in the land area that is the subject of the annexation petition.
 - j. The boundaries of other governmental units and the location of private organizations in the territories of the respective districts.
 - k. The educational needs of local communities in the involved districts.
 - l. An objective in economizing in the use of transportation and administrative services.
 - m. Projected future use of existing satisfactory school buildings, sites, and playfields in the involved districts.
 - n. A reduction in disparities in per student valuation between school districts and the objective of equalization of educational opportunities for pupils.
 - o. Any other relevant factors which, in the judgment of the committee, are of importance.
4. Following the committee's consideration of testimony and documentary evidence with respect to any of the factors listed in subsection 3, the committee shall make specific findings with reference to every one of those factors to which testimony or documentary evidence was directed.
 5. ~~All~~ Except as provided in this subsection, all proposed annexations must be given final approval by the state board following a hearing conducted by the board at which testimony and documentary evidence shall be considered with respect to any of the factors listed in subsection 3. The state board shall make specific findings with reference to every one of those factors to which testimony or documentary evidence was directed. If the county committee approves an annexation after receiving no opposition at the hearing, the state board may review the record of the county hearing and give final approval to the annexation without holding a hearing.
 6. If the school districts involved in the proposed annexation are situated in more than one county, the county committee of the county encompassing the major portion of each school district shall consider and jointly effect the annexation if a majority of the members of each of such county committees approves the annexation. If the annexation is approved by a majority of the members of one of the two county committees, the county superintendent of the county in which the annexing district is located shall submit the annexation to the state board for approval or disapproval, and in such instance approval of the annexation shall have the same effect as approval by all county committees.
 7. Whenever a petition for annexation has failed to be approved by any county committee, a petition involving any of the same area may not be submitted to the county committee for a period of three months after the filing of the original petition with the county. The petition may not be considered by the county committee more than twice in twelve consecutive months.

8. Whenever a petition for annexation has failed to be approved by the state board, a petition involving any of the same area may not be submitted to the county committee for a period of three months after the state board's determination not to approve the annexation. The petition may not be considered by the state board more than twice in twelve consecutive months.
9. If the school districts are situated in more than one county but the major portions of both such school districts are situated in the same county, the county committee of such county shall consider the matter.
10. Any determination made by a single county committee with respect to an annexation proposed under this section may be appealed to the state board. A decision of the state board with respect to a proposed annexation may in turn be appealed to the district court of the judicial district in which the territory proposed is located in accordance with chapter 28-32.

Approved March 13, 1997
Filed March 13, 1997

CHAPTER 162

HOUSE BILL NO. 1127

(Political Subdivisions Committee)
(At the request of the Secretary of State)

COMBINED ELECTION NOTICES

AN ACT to amend and reenact subsection 5 of section 15-28-03, and sections 15-28-06 and 40-21-02 of the North Dakota Century Code, relating to election notices in combined county, city, or school district elections.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 15-28-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. If the school election is held in conjunction with the primary election, the school board may enter into an agreement with the governing body of the county or counties in which the district lies concerning use of a single canvassing board, the sharing of election personnel, the printing of election materials, the publishing of legal notices, and the apportioning of election expenses.

SECTION 2. AMENDMENT. Section 15-28-06 of the North Dakota Century Code is amended and reenacted as follows:

15-28-06. Annual and special elections - Notice. Notice of the annual school district election and notice of special school elections must be given by the school board. At least fourteen days before the date the election is to be held the school board must cause to be published, in the official newspaper of the school district, notice of the election. ~~Such~~ The notice must be signed by the business manager of the school district, or in the business manager's absence by the president of the school board, and must state the time and place of holding the election, and the matter to be voted upon. When a school district enters into an agreement with the county to hold the school district election in conjunction with the primary election pursuant to section 15-28-03, the deadline for giving notice of the school district election along with the matter to be voted upon may be adjusted in order to meet the publishing requirements of the county.

SECTION 3. AMENDMENT. Section 40-21-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-21-02. City elections - When held - Notice - Polls - Agreements with counties - Judges and inspectors. Biennial municipal elections must be held on the second Tuesday in June in each even-numbered year. Ten days' notice of the time and place of the election and of the offices to be filled at ~~such~~ the election must be given by the city auditor by publication in the official newspaper of the city as

provided by section 40-01-09. The governing body of a city shall enter into an agreement with the governing body of the county or counties in which the city lies concerning the use of a single canvassing board, the sharing of election personnel, the printing of election materials, the publishing of legal notices, and the apportioning of election expenses. For city elections that are not held under an agreement with any county the governing body of the city shall appoint one inspector, two clerks, and two judges of election for each precinct in the city at least ten days before the election is held and the polls must be opened and closed as provided for the opening and closing of polls at statewide elections. For a city election that is not held under an agreement with any county in a precinct in which seventy-five or fewer votes were cast in the last city election, the governing body of the city may appoint one inspector and one judge. When a city enters into an agreement with the county to hold the city election in conjunction with the county election, the deadline for giving notice of the city election along with the offices to be filled at the election may be adjusted in order to meet the publishing requirements of the county.

Approved March 5, 1997

Filed March 6, 1997

CHAPTER 163

HOUSE BILL NO. 1368

(Representatives Grande, Belter, Boehm)
(Senators Schobinger, Wanzek)

HOME EDUCATION

AN ACT to amend and reenact subsection 1 of section 15-34.1-00.1, subsection 5 of section 15-34.1-03, sections 15-34.1-06, 15-34.1-07, 15-34.1-08, 15-34.1-09, 15-34.1-10, and 15-34.1-11 of the North Dakota Century Code, relating to home education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 15-34.1-00.1 of the North Dakota Century Code is amended and reenacted as follows:

1. "~~Home-based instruction~~" "Home education" means an educational program for ~~students~~ a child, based in the child's home and supervised by the child's parent or parents wherein a resident of North Dakota may legally fulfill the compulsory instruction requirements of section 15-34.1-01.

SECTION 2. AMENDMENT. Subsection 5 of section 15-34.1-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. That the child, not including a child with developmental disabilities as defined by subsection 1 of section 25-01.2-01, is receiving ~~home-based instruction~~ home education in accordance with the provisions of this chapter.

SECTION 3. AMENDMENT. Section 15-34.1-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-34.1-06. ~~Home-based instruction~~ Home education.

1. ~~Home based instruction~~ Home education is an educational program for ~~students~~ a child. It is based in the child's home and supervised by the child's parent or parents. ~~A parent who provides home-based instruction may only invoke the home-based instruction exception to compulsory attendance.~~
2.
 - a. A parent is qualified to supervise a program of ~~home-based instruction~~ home education if the parent is certified to teach in North Dakota; has a baccalaureate degree; or has met or exceeded the cut-off score of the national teacher exam given in North Dakota, or in any other state if North Dakota does not offer such a test.
 - b. A parent who has a high school diploma or a general education development certificate is qualified to supervise ~~home-based instruction~~ home education but must be monitored by a certificated

teacher during the first two years the parent supervises ~~that instruction, and if home education~~ or until the child being instructed completes the third grade, whichever is later. If the child being instructed receives a composite standardized achievement test score below the fiftieth percentile nationally, the monitoring required by this section must continue during the following school year or longer if the child has not achieved the fiftieth percentile. If testing is not required by section 15-34.1-07 in either of the first two years of monitoring, the time of monitoring may not be extended except upon the mutual consent of the parent and the monitor. Once a parent has completed the monitoring requirements for one child, the parent may not be monitored with respect to other children being educated at home.

3. ~~Home-based instruction~~ Home education must include instruction in those subjects required to be taught in accordance with sections 15-38-07, 15-41-06, and 15-41-24 ~~and~~. Instruction must be provided for at least four hours per day for a minimum of one hundred seventy-five days per year.
4. Every parent supervising ~~home-based instruction~~ home education shall maintain an annual record of courses taken by the child and the child's academic progress assessments, including any standardized achievement test results. A parent shall furnish these records to any school to which the child may transfer upon request of the superintendent or other administrator of that public school district. A parent intending to supervise ~~home-based instruction~~ home education for the parent's child shall file an annual statement with the superintendent of the public school district in which the child resides. If the school district does not employ a local school superintendent, the statement must be filed with the county superintendent of schools for the county of the child's residence. The statement must be filed at least ~~thirty~~ fourteen days prior to the beginning of ~~the school semester for which the parent requests an exemption except when residency of the child is not established by that date. If residency has not been established, the statement must be filed within thirty days of the establishment of home education or within~~ fourteen days of establishing the child's residency within the district. The statement must include:
 1. a. The names and addresses of the parent who will supervise and the child who will receive ~~home-based instruction~~ home education;
 2. b. The date of birth and grade level of each child receiving home education;
 3. c. The intention of the parent to supervise ~~home-based instruction~~ home education;
 4. d. The qualifications of the parent who will supervise ~~the home-based instruction~~ home education;
 5. e. A list of courses or extracurricular activities in which the child intends to participate in the public school district;
 6. f. Proof of an immunization record as it relates to section 23-07-16; and

7. g. Proof of identity as it relates to section 54-23.2-04.2; and
8. An oath or affirmation that the parent will comply with all provisions of this chapter.

SECTION 4. AMENDMENT. Section 15-34.1-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-34.1-07. ~~Students receiving home-based instruction~~ Home education - Quality assurance. ~~In order to meet the state's compelling interest in assuring that citizens of the state receive a quality education, the~~ The following minimum indices of quality education are established:

1. A standardized achievement test used by the public school in the school district in which the parent resides or, if requested by the parent, a nationally normed standardized achievement test ~~used by a state-approved nonpublic school~~ must be given to each child receiving ~~home-based instruction~~ home education in grades three, four, six, eight, and eleven. The test must be given in the child's learning environment or, at the option of the child's parent, in the public school and must be administered by a ~~certified~~ certificated teacher. The cost of ~~such testing must be borne by the test~~ is the responsibility of the local school district in which the parent resides if the test is administered by a certified teacher employed by a public school district or by the parent of the child if the test is a nationally normed standardized achievement test requested by the parent, if it is a test used by the district. The cost of administering the test is the responsibility of the local school if it is district administered by a certificated teacher employed by the district. The cost of the test is the responsibility of the parent if the test requested is not used by the local school district and the cost of having the test administered is the responsibility of the parent if it is administered by a certificated teacher secured by the parent. Results of such testing must be filed with the local public school superintendent. If the parent resides in a school district which does not employ a local school superintendent, the results must be filed with the county superintendent of schools for the county of the parent's residence.
2. If the child's basic composite score on a standardized achievement test falls below the thirtieth percentile nationally, the child must be professionally evaluated for a potential learning problem by a multidisciplinary assessment team according to guidelines established by the superintendent of public instruction. If the multidisciplinary assessment team evaluation determines that the child is not ~~handicapped~~ disabled according to the eligibility criteria ~~of the department~~ established by the superintendent of public instruction and the child does not require specially designed instruction according to rules adopted by the department of public instruction, the parent providing instruction may continue to ~~provide home-based instruction~~ conduct home education, upon filing with the superintendent of ~~the public instruction~~ a statement school district, from an appropriately licensed professional, that the child is currently making reasonable academic progress when the learning abilities of the child are taken into consideration. If such statement is not filed, the parent is not entitled to an exemption under subsection 5 of section 15-34.1-03 or county superintendent if there is no local superintendent, a plan of remediation to address the academic deficiencies of the child. An annual determination of reasonable

academic progress conducted by the local school district superintendent must be based on the child's plan of remediation. If such a plan is not filed, the parent is deemed to be in violation of the compulsory attendance requirement of section 15-34.1-01 and the child no longer qualifies for home education. Such plan of remediation must be developed in consultation with and with the approval of a state-certificated teacher selected by the parent. Costs associated with the consultation are the responsibility of the parent. The plan of remediation must remain in effect until such time as the child demonstrates reasonable academic progress by achieving a basic composite score on a standardized achievement test at or above the thirtieth percentile or a score indicating one year of academic progress as compared to a score on a test from the previous school year. The test may be one required by this section or one administered in an additional grade level, at the option of the parent. The plan of remediation may be amended from time to time in consultation with and with the approval of the state-certificated teacher in order to accommodate the academic needs of the child. If a plan of remediation is no longer in effect and the child fails to demonstrate reasonable academic progress on a subsequent test required by this section, a plan of remediation must again be developed and instituted. If the evaluation of the multidisciplinary assessment team determines that the child is handicapped, but not developmentally disabled, but does not have a developmental disability, according to the eligibility criteria of the department established by the superintendent of public instruction, and that the student child requires specially designed instruction due to the handicap disability, and that this instruction cannot be provided without special education and related services, the parent providing instruction may continue to provide home-based instruction home education, upon filing with the superintendent of the public instruction school district an individualized education program plan, formulated within rules adopted by the department of public instruction developed privately or through the local school district, indicating that the child's needs need for special education are is being appropriately addressed by persons qualified to provide special education or related services. An annual determination of reasonable academic progress conducted by the local school district superintendent must be based on the child's individualized education plan. If such a plan is not filed, the parent is not entitled to an exemption under subsection 5 of section 15-34.1-03 is deemed to be in violation of the compulsory attendance requirements of section 15-34.1-01, and the child no longer qualifies for home education. A child who is once evaluated by a multidisciplinary team need not be reevaluated for a potential learning problem upon scoring below the thirtieth percentile on a subsequent standardized achievement test unless the reevaluation is performed pursuant to the provision of special education and related services.

3. Any certified certificated teacher monitoring home-based instruction home education shall spend, at a minimum, an average of one hour per week in contact with the first student and in conjunction with the parent. With two or more children under supervision, the teacher shall monitor spend, at a minimum, an additional one-half hour per month for each child under the teacher's supervision who is receiving home-based instruction home education. The time may be reduced proportionately if the child is in attendance in a public school or an approved private nonpublic school. The teacher shall evaluate the student's progress and

report the student's progress at least twice annually to the local public school superintendent. If the school district does not employ a local school superintendent, the report must be filed with the county superintendent of schools for the county of the child's residence.

4. ~~If the local superintendent of public schools or the county superintendent of schools in those school districts that do not employ a local superintendent determines that the child is not making reasonable academic progress consistent with the child's age or stage of development, the parent of the child must be notified of the conclusion reached and the basis for the conclusion. Upon receipt of that notice, the parent shall make a good faith effort to remedy any deficiency. The appropriate official shall report the failure on the part of a parent to make a good faith effort to the state's attorney pursuant to section 15-34.1-04 as a violation of this chapter. The superintendent of public instruction shall adopt rules to assist local superintendents of schools, county superintendents of schools, and the licensed professionals referred to in subsection 2, in determining whether a child is making reasonable academic progress. If a monitor is required by section 15-34.1-06, the school district shall, at the request of the parent, provide the monitor at school district expense. A monitor retained by the parent must be compensated by the parent.~~

SECTION 5. AMENDMENT. Section 15-34.1-08 of the North Dakota Century Code is amended and reenacted as follows:

15-34.1-08. State aid. For purposes of allocating foundation aid and other state assistance to local school districts, a student receiving ~~home-based instruction~~ home education is deemed enrolled in the school district in which the student resides if the student is monitored by a certificated teacher employed by the public school district in which the parent resides. A school district is entitled to one-half of the ~~per-pupil~~ per student payment provided in section 15-40.1-06 times the appropriate factor in section 15-40.1-07 or 15-40.1-08 for each such student. When a student is supervised ~~through home-based instruction~~ in home education and is enrolled in classes in the public school, proportionate payments must be made as provided in sections 15-40.1-07 and 15-40.1-08. The total amount may not exceed the equivalent of one full foundation aid payment.

SECTION 6. AMENDMENT. Section 15-34.1-09 of the North Dakota Century Code is amended and reenacted as follows:

15-34.1-09. Monitoring or administration by a ~~certified~~ certificated teacher. Any ~~certified~~ certificated teacher who monitors ~~home-based instruction~~ a child receiving home education or who administers a standardized achievement test to ~~children receiving home-based instruction~~ a child receiving home education must notify the child's public school district of residence that the teacher is providing such monitoring or administration. The parent of any ~~student receiving home-based instruction~~ that child receiving home education who is monitored by or taking a test administered by a ~~certified~~ certificated teacher not employed by a public school district is responsible for ~~any the costs charged for such~~ of the monitoring or test administration.

SECTION 7. AMENDMENT. Section 15-34.1-10 of the North Dakota Century Code is amended and reenacted as follows:

15-34.1-10. ~~Home-based instruction~~ Home education - Liability. No state agency, public school district, or county superintendent may be found liable for accepting as correct the information on the statement of intent or for any damages resulting from the parent's failure to educate the child.

⁹ **SECTION 8. AMENDMENT.** Section 15-34.1-11 of the North Dakota Century Code is amended and reenacted as follows:

15-34.1-11. ~~Home-based instruction~~ Home education - High school diploma - Fee. The superintendent of public instruction shall issue to a student who has completed the requirements for high school graduation through ~~home-based instruction~~ home education a diploma that clearly indicates that the requirements for graduation have been met through ~~home-based instruction~~ home education. The superintendent may charge a fee for issuing the diploma.

Approved April 3, 1997
Filed April 3, 1997

⁹ Section 15-34.1-11 was repealed by section 2 of House Bill No. 1456, chapter 164.

CHAPTER 164

HOUSE BILL NO. 1456

(Representatives Koppelman, Torgerson, Grumbo)
(Senators Christmann, Lee, Nalewaja)

HOME EDUCATION DIPLOMAS

AN ACT to create and enact a new section to chapter 15-34.1 of the North Dakota Century Code, relating to the issuance of high school diplomas to home education students; and to repeal section 15-34.1-11 of the North Dakota Century Code, relating to the issuance of high school diplomas by the superintendent of public instruction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-34.1 of the North Dakota Century Code is created and enacted as follows:

High school diplomas - Issuance to home education students.

1. A high school diploma may be issued to a student by the student's school district of residence, a state-approved nonpublic high school, or the North Dakota division of independent study if the student, through home education, has met the issuing entity's requirements for high school graduation and the student's parent or legal guardian provides the issuing entity with a description of the course material covered in each high school subject, a description of the course objectives and how the objectives were met, and a transcript of the student's performance in grades nine through twelve.
2. In the alternative, a high school diploma may be issued to a student by the student's school district of residence, a state-approved nonpublic high school, or the North Dakota division of independent study if the student, through home education, has completed at least seventeen units of high school coursework from the minimum required curriculum offerings established for public and private schools in section 15-41-24 and the student's parent or legal guardian provides the issuing entity with a description of the course material covered in each high school subject, a description of the course objectives and how the objectives were met, and a transcript of the student's performance in grades nine through twelve. The issuing entity may indicate on a diploma issued under this subsection that the student has received home education.
3. If for any reason the documentation required in subsection 1 or 2 is unavailable, the entity issuing the diploma may accept any other reasonable proof that the student has met the applicable requirements for high school graduation.

¹⁰ **SECTION 2. REPEAL.** Section 15-34.1-11 of the North Dakota Century Code is repealed.

Approved April 9, 1997
Filed April 10, 1997

¹⁰ Section 15-34.1-11 was amended by section 8 of House Bill No. 1368, chapter 163.

CHAPTER 165

SENATE BILL NO. 2032 (Legislative Council) (Education Finance Committee)

SCHOOL FIRE INSPECTIONS

AN ACT to create and enact a new section to chapter 15-35 of the North Dakota Century Code, relating to the inspection of schools by the state fire marshal or the state fire marshal's designee; and to amend and reenact sections 15-35-01.1 and 18-01-02 of the North Dakota Century Code, relating to required approval for school district construction projects and the duties of the state fire marshal.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-35-01.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-35-01.1. Approval required for certain school district construction projects.

1. Notwithstanding the powers and duties of school boards of public school districts otherwise provided by law, all construction, purchase, repair, improvement, renovation, or modernization of any school building or facility within a school district estimated by the school boards to cost in excess of twenty-five thousand dollars may not be commenced unless approved by the superintendent of public instruction. No such construction, purchase, repair, improvement, renovation, or modernization of any school building or facility may be approved unless the school district proposing the project demonstrates the need, the educational utility of the project, fiscal need, and the capacity to pay for the project under rules adopted by the superintendent of public instruction pursuant to chapter 28-32 after receiving input from the state board of public school education. In the event of disagreement between the superintendent of public instruction and the school board applying for approval of a construction project under this section, the school board may appeal the application to the state board of public school education and the decision of the state board approving or disapproving the application is final.
2. For purposes of this section, "facility" includes a parking lot, athletic complex, or any other improvement to real property owned by the school district.
3. This section does not apply to any construction, purchase, repair, improvement, renovation, or modernization required as part of a plan of correction approved by the state fire marshal under section 2 of this Act, unless the cost of the improvements exceeds seventy-five thousand dollars.

SECTION 2. A new section to chapter 15-35 of the North Dakota Century Code is created and enacted as follows:

Inspection of schools - Submission of inspection report - Correction of deficiencies.

1. The state fire marshal or the state fire marshal's designee shall inspect each public and private elementary and secondary school in this state at least once every three years, prepare an inspection report, and provide copies of the report to the superintendent of the school district and the superintendent of public instruction.
2. a. If a deficiency is noted, the superintendent of the school district shall submit a plan of correction to the state fire marshal or the state fire marshal's designee and shall remedy the deficiency within a time period acceptable to the state fire marshal or the state fire marshal's designee and the local school board affected by the deficiency, but not later than the next budget period.
 - b. If the report discloses an imminent fire hazard, the state fire marshal or the state fire marshal's designee shall immediately notify the school district board, the superintendent of the school district, and the superintendent of public instruction of the hazard. Upon the recommendation by the superintendent of public instruction for immediate closure, the school district board and the superintendent of the school district may immediately close some or all of the school, until the fire hazard is eliminated. In the case of a closure, the superintendent of the school district in which the public school is located, or the administrator of the private school shall cooperate with the superintendent of public instruction to make adequate arrangements for the interim education of all affected students.

SECTION 3. AMENDMENT. Section 18-01-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

18-01-02. Duties of state fire marshal and deputy state fire marshals. The state fire marshal and deputy state fire marshals may enforce all the laws of the state providing for:

1. The prevention of fires.
2. The storage, sale, and use of combustibles and explosives.
3. The installation and maintenance of automatic or other fire alarms and fire extinguishing equipment.
4. The means and adequacy of exits in case of fires from all public and private elementary and secondary schools, from all public places, and from all other places in which fifty or more persons congregate from time to time for any purpose.
5. The suppression of arson and the investigation of the cause and origin of fires.
6. The education of the citizens of North Dakota on the hazards of fire, through organized programs.

CHAPTER 166

HOUSE BILL NO. 1337

(Representatives Clark, Huether, Torgerson)
(Senators Andrist, Grindberg, Wanzek)

SCHOOL GUIDANCE AND COUNSELING SERVICES

AN ACT relating to the provision of guidance and counseling services at the elementary and secondary school level.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. School guidance and counseling services - Providers.

Notwithstanding any other law, guidance and counseling services at the elementary and secondary school level may be provided by a person holding a graduate degree in counseling from a state-approved school counseling program, with coursework and an internship in school counseling, as required for all counselors by the superintendent of public instruction, provided the person has a valid North Dakota teaching certificate or will obtain one within seven years from the date of first employment under the provisions of this section. The education standards and practices board shall adopt rules relating to the background check of a person hired under this section. All costs associated with a background check are the responsibility of the person being hired. The education standards and practices board shall monitor a person hired under this section to ensure that the person annually completes at least one-seventh of the total credits required for that person to obtain a teaching certificate as determined on the date of first employment under this section.

Approved April 10, 1997
Filed April 10, 1997

CHAPTER 167

HOUSE BILL NO. 1216

(Representatives Wardner, Aarsvold, Drovdal)
(Senators Freborg, Kelsh)

TEACHER CERTIFICATION

AN ACT to create and enact a new section to chapter 15-38 of the North Dakota Century Code, relating to the initial certification of teachers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-38 of the North Dakota Century Code is created and enacted as follows:

Education standards and practices board - Initial certification of teachers -

Background. The education standards and practices board shall check, or cause to be checked, the background of each applicant for initial certification as a teacher. The board shall require each applicant for certification to file a complete set of the applicant's fingerprints, taken by a law enforcement officer, and all other information necessary to complete a state and nationwide criminal history check with the bureau of criminal investigation for state processing and filing with the federal bureau of investigation for federal processing. All costs associated with the background check and with obtaining and processing the fingerprints are the responsibility of the applicant. Criminal history records provided to the board pursuant to this section are confidential and closed to the public and may only be used by the board for determining an applicant's eligibility for licensure and obtaining documentation to support a denial of licensure.

Approved April 3, 1997
Filed April 3, 1997

CHAPTER 168

SENATE BILL NO. 2095

(Education Committee)

(At the request of the Education Standards and Practices Board)

TEACHER AND SCHOOL ADMINISTRATOR COMPLAINTS

AN ACT to amend and reenact section 15-38-19 of the North Dakota Century Code, relating to complaints against teachers and school administrators.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-38-19 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-38-19. Complaints against teachers and school administrators. The education standards and practices board or the administrator's professional practices board shall accept complaints against any member of the teaching profession engaged in teaching or administration alleging a violation ~~or violations~~ of rules ~~promulgated~~ adopted in accordance with section 15-38-18 or alleging grounds as set forth in section 15-36-15. The complainant shall prepare and file a clear and concise complaint with the appropriate board. The complaint must contain a concise statement of the claims or charges upon which the complainant relies ~~including references to the statute or rule allegedly violated~~. The complaint must be signed and may include supporting affidavits documentation. Upon the filing of the complaint with the appropriate board, that board shall serve a copy of the complaint and any supporting affidavits documentation upon the teacher or administrator personally or by certified mail. Within twenty days of the receipt of the complaint by the teacher or administrator, the teacher or administrator may file with the appropriate board a clear and concise answer to the complaint. The answer may include supporting affidavits documentation. If the teacher or administrator fails to file an answer with the appropriate board, the allegations in the complaint will be deemed admitted and the appropriate board shall proceed to hold a hearing pursuant to section 15-36-16. If an answer is submitted by the teacher or administrator, the appropriate board shall hold a hearing meeting for the purpose of reviewing and discussing the documentation submitted by the respective parties. No testimony by any witnesses may be permitted at this hearing meeting. Following the hearing meeting, the board may dismiss a complaint as unfounded, issue a written warning and reprimand, or, upon the determination that sufficient evidence exists to sustain the charges, order a hearing pursuant to section 15-36-16.

Approved March 19, 1997

Filed March 19, 1997

CHAPTER 169

HOUSE BILL NO. 1143

(Government and Veterans Affairs Committee)
(At the request of the Teachers' Fund for Retirement)

TFFR ADMINISTRATION

AN ACT to create and enact two new sections to chapter 15-39.1 of the North Dakota Century Code, relating to correction of errors in teachers' fund for retirement benefit calculations; to amend and reenact subsections 10 and 11 of section 15-39.1-04, sections 15-39.1-08, 15-39.1-14, 15-39.1-15, 15-39.1-19.1, 15-39.1-20, 15-39.1-23, and 15-39.1-24 of the North Dakota Century Code, relating to definitions, compensation of board members, mandatory retirement, return to teaching, withdrawal, failure to make required reports and payments, military service credit, and acceptance of rollovers from other qualified plans under the teachers' fund for retirement; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 10 and 11 of section 15-39.1-04 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

10. "State institution" includes the school for the blind, the school for the deaf, ~~the developmental center at westwood park, Grafton,~~ and the North Dakota youth correctional center.
11. "Teacher" means:
 - a. All persons certified to teach in this state by the education standards and practices board who are contractually employed in teaching, supervisory, administrative, or extracurricular services in any state institution or by any school board or other governing body of any school district of this state, including superintendents, assistant superintendents, business managers, principals, assistant principals, and special teachers employed in any state institution or in the school system of any school district in this state.
 - b. The superintendent of public instruction, assistant superintendents of public instruction, county superintendents, assistant superintendents, supervisors of instruction, the professional staff of the state board for vocational and technical education, the professional staff of the division of independent study, the executive director and professional staff of the North Dakota education association who are members of the fund on July 1, 1995, the professional staff of an interim school district, and the professional staff of the North Dakota high school activities association who are members of the fund on July 1, 1995.
 - c. The executive director and professional staff of the North Dakota council of school administrators who are members of the fund on

July 1, 1995, and certified staff of teachers centers, but only if the person was previously a member of and has credits in the fund.

- d. Employees of institutions under the control and administration of the state board of higher education who are members of the fund on July 16, 1989.

SECTION 2. AMENDMENT. Section 15-39.1-08 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-08. Compensation of members. Members of the board, excluding ex officio members, ~~must be compensated for attendance at meetings from the fund at the rate of fifty dollars per day, plus expenses of travel, food, and lodging as allowed by law for state employees are entitled to receive sixty-two dollars and fifty cents as compensation per day and necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09 for attending meetings of the board.~~ No member of the board may lose regular salary, vacation pay, vacation or any personal leave, or be denied right of attendance by the state or political subdivision thereof while serving on official business of the fund.

SECTION 3. AMENDMENT. Section 15-39.1-14 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-14. Retirement not mandatory - ~~When retirement occurs.~~ Nothing in this chapter may be construed as requiring retirement at any specific age. If the teacher elects to teach beyond age sixty-five ~~and is permitted to do so by the body for whom he works, he shall continue, the teacher continues~~ to earn credits at the same rate as prior to the age of sixty-five. ~~Retirement must be deemed to have occurred and benefits are payable from the date of last teaching prior to the filing of a written application for retirement benefits, except in the case of a teacher whose rights in the fund have become vested but who chooses not to retire prior to age sixty-five, in which case the benefits must be paid from the date such teacher attains the age of sixty-five.~~

SECTION 4. AMENDMENT. Section 15-39.1-15 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-15. Withdrawal from fund - Return to teaching. Any teacher who has withdrawn from the fund as set forth in this chapter may, by returning to teach ~~one full school year~~ in a public school or state institution of this state, regain credit for prior teaching by making the required payment. The required payment, if made within five years of ~~initial eligibility~~ returning to teach, is the amount that was ~~returned to the teacher on withdrawal~~ withdrawn with interest. In all other cases, the purchase cost must be on an actuarial equivalent basis. The fund may accept rollovers from other qualified plans under rules adopted by the board for the repurchase of refunds previously taken, but only to the extent the transfer is a rollover contribution that meets the requirements of section 408 of the Internal Revenue Code.

SECTION 5. AMENDMENT. Section 15-39.1-19.1 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-19.1. Annuities discontinued on resumption of teaching. The benefits payable to any retired person who has retired from teaching under chapter ~~15-39, 15-39.1, or 15-39.2~~ and who again returns to teaching in a public school or state institution in this state must be discontinued when the retired person's earnings

during the fund's fiscal year exceed the maximum earnings allowed by the federal Social Security Act. Such person shall immediately notify the office of the fund in writing when the retired person's earnings have exceeded such maximum. Failure to notify the fund results in the loss of one month's annuity benefits when the payment of the annuity is resumed upon further retirement, in addition to the discontinuance of benefits paid after reaching such maximum. A retired teacher who is receiving a retirement annuity under chapter 15-39, 15-39.1, or 15-39.2 may not return to covered employment until sixty calendar days have elapsed from the member's retirement date. A retired member may then return to covered employment for a maximum of ninety working days and continue receiving a monthly retirement benefit. For purposes of this section, a working day is four or more hours of teaching. The board may waive this restriction in emergency situations.

Should the retired member's employment exceed the ninety-day maximum limit, the retired member must immediately notify the fund office in writing. Failure to notify the fund office will result in the loss of one month's annuity benefit. The retired member's monthly benefit must be discontinued the first of the month following the date the member reaches the ninety-day maximum.

Any retired ~~person~~ member who returns to teaching shall pay the required assessments on those earnings received ~~after the maximum has been exceeded in the fiscal year and the~~ by the retired member after the ninety-day maximum. The employer shall pay the required contributions in a like manner.

Upon the teacher's subsequent retirement, the member's benefit must be resumed as follows:

1. If the teacher subsequently retires with less than two years of additional credited service, the teacher's assessments paid to the fund must be refunded in accordance with section 15-39.1-20 and the teacher is ~~not~~ entitled to receive the discontinued annuity ~~for those months of the fiscal year during which the earnings were in excess of the maximum earnings so established~~ the first day of the month following the teacher's re-retirement.
2. If the teacher subsequently retires with more than two years of additional credited service, the retired person's annuity ~~must be~~ is the sum of the discontinued annuity, plus an additional annuity computed according to this chapter based upon years of service and average salaries earned during ~~such~~ the period of reemployment. The new annuity is payable the first day of the month following the member's re-retirement.

SECTION 6. AMENDMENT. Section 15-39.1-20 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-39.1-20. Withdrawal from fund. When a member of the fund ceases to be eligible under the terms of this chapter to participate in the fund, the member may, after a period of one hundred twenty days, withdraw from the fund and is then entitled to receive a refund of assessments accumulated with interest. The one-hundred-twenty-day requirement may be waived by the board when it has evidence the teacher will not be returning to teach in North Dakota. The refund is in lieu of any other benefits to which the member may be entitled under the terms of this chapter. The accumulated assessments of a member who ceases to be eligible to participate in the fund before accumulating five years of service credit must be automatically refunded. The assessments plus interest earned, if not claimed by the member, must be returned ~~during the month of January next~~ in the fiscal year

following the date of termination. The automatic refund must be waived provided the member presents the board with a statement of intent to return to teach in North Dakota within thirty-six months after eligibility to participate in the fund ceases. The board may waive the automatic refund for members who present to the board a statement of intent to return to teach in North Dakota within a period exceeding thirty-six months after eligibility to participate in the fund ceases. For distributions made after January 1, 1993, notwithstanding any provision of the plan to the contrary that would otherwise limit a member's refund election under this chapter, a member may elect, at the time and under rules established by the board, to have any portion of an eligible rollover distribution paid directly in a direct rollover to an eligible retirement plan specified by the member.

SECTION 7. AMENDMENT. Section 15-39.1-23 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-23. Penalties for failure to make required reports and payments. ~~As~~ Except for unintentional reporting errors, an employing body failing to file reports required by the board or failing to pay over for credit to the fund the amounts required to be paid by this chapter, is subject to a civil penalty of two hundred fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after the report was required to be filed or the payment became due. The board, if satisfied the delay or underpayment was unintentional and excusable, may waive, or if paid, refund all or part of the two hundred fifty dollar penalty and may reduce the interest rate charge to the investment return rate used in the most recent actuarial valuation, compounded annually, but may not waive the entire amount of the interest. The penalty must be paid to the fund and deposited in the same manner as other receipts under this chapter.

In addition ~~to~~ a school district may not share in the apportionment of any money from the state for any year unless the school board, or an officer thereof, has made the reports required by the board as permitted by this chapter, and has paid over for credit to the fund the amounts required to be paid ~~by~~ under this chapter.

SECTION 8. AMENDMENT. Section 15-39.1-24 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-39.1-24. Purchase of additional credit. Prior to retirement a teacher may purchase additional credit for use toward retirement in the following instances and manner:

1. Any teacher may purchase service credit for years of teaching service at an out-of-state school or educational institution supported by public taxation out of North Dakota. However, a teacher must complete five years of creditable service in this state before the teacher is eligible to purchase the first five years of service credit for out-of-state teaching under this subsection. The teacher may purchase any part of the remaining years of service credit for out-of-state teaching with each year of service credit conditional upon the teacher completing one additional year of creditable service in this state following the out-of-state teaching. The years of out-of-state teaching service do not qualify for credit in this state if the years claimed also qualify for retirement benefits from an out-of-state retirement system.
2. Any teacher who has received an honorable discharge from military service of the United States of America may receive credit for no more than four years of active service, upon filing application and proof with

the board and subject to the terms of this chapter upon teaching one year in North Dakota subsequent to military service. Members qualified to receive military credit under the Veterans' Reemployment Rights Act [Pub. L. 93-508; 88 Stat. 1594; 38 U.S.C. 2024 et seq.] Uniformed Services Employment and Reemployment Rights Act of 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307] shall only pay member assessments plus interest pursuant to rules adopted by the board. For those individuals becoming eligible to receive military credit under the Veterans' Reemployment Rights Act Uniformed Services Employment and Reemployment Rights Act after June 30, 1991, the employer shall pay the required employer contribution for military service.

3. A teacher who attends a college, university, or other recognized school for two consecutive semesters or three consecutive quarters, other than summer sessions, for the purpose of improving the teacher's qualifications in the teaching profession is entitled to have such periods while in attendance at that college, university, or school credited, not to exceed three years of teaching service, under this chapter. To be eligible for purchasing credit under this subsection, the teacher must have taught at least one full school year in North Dakota immediately preceding entrance into the college, university, or school, or, immediately following such training, the teacher must have taught not less than one full school year in a public school or state institution of this state.
4. A teacher may purchase service credit for the time during each legislative session spent serving as a member of the legislative assembly while holding eligible employment under this chapter. Service credit for a legislative session must be purchased within one year after the adjournment of that legislative session. As an alternative to a teacher purchasing service credit under this subsection, a teacher and the governmental body employing the teacher may enter into an agreement by which payment for service credit for time spent during each legislative session by the teacher serving as a member of the legislative assembly is made pursuant to section 15-39.1-09. The agreement must provide that contributions made pursuant to section 15-39.1-09 are calculated based on the teacher's annual salary without reduction for a leave of absence taken by the teacher during the legislative session.
5. A teacher may purchase credit for service as an administrator or teacher in the field of education if employed by an agency of the United States government teaching school age children. The maximum service that may be purchased under this subsection is ten years.
6. An active teacher who is elected president of a professional educational organization recognized by the board and who serves in a full-time capacity in lieu of teaching may purchase service credit for the time spent serving as president. The service credit must be purchased within one year after the teacher leaves the position. As an alternative to purchasing service credit under this subsection, a teacher and the governmental body employing the teacher may enter into an agreement under which payment for service credit for the time spent as president of the professional educational organization is made pursuant to section 15-39.1-09. The agreement must provide that contributions made pursuant to section 15-39.1-09 are calculated based on the teacher's annual salary as president.

7. The fund may accept rollovers from other qualified plans under rules adopted by the board for the purchase of additional service credit, but only to the extent the transfer is a rollover contribution that meets the requirements of section 408 of the Internal Revenue Code.
8. Except as provided in subsections 2, 4, and 6, the amount of additional service eligible to be purchased under this section must be credited to the teacher when the teacher has made the required payment. In all cases, the purchase cost must be on an actuarial equivalent basis.

SECTION 9. Two new sections to chapter 15-39.1 of the North Dakota Century Code are created and enacted as follows:

Correction of errors - Adjustment to actuarial equivalent. If any change or error in the records of the fund or any participating employer or error in any calculation results in any person receiving from the fund more than that person would have been entitled to receive had the records been correct, the board shall correct the error and, as far as practicable, adjust the payment in such a manner that the actuarial equivalent of the benefit to which the person was entitled is paid or the board may offset the amount of the overpayment from the amount of future retirement benefit payments. However, if the person agrees to repay the fund for the cost of the error upon terms acceptable to the board, no actuarial adjustment to the person's retirement benefit need be made.

Correction of errors - Lump sum payment. If any change or error in the records of the fund or any participating employer or any error in calculation results in any person receiving less from the fund than that person would have been entitled to receive had the records been correct, the board shall correct the error and adjust the payment in such a manner that the benefit to which the person was correctly entitled is paid. In addition, the board shall remit payment to the person in a lump sum to compensate that person for the difference between what was paid and what should have been paid. No interest may be assessed against the fund for providing payment for the correction of any loss of benefits.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 170

HOUSE BILL NO. 1142

(Government and Veterans Affairs Committee)
(At the request of the Teachers' Fund for Retirement)

TFFR BOARD COMPOSITION

AN ACT to create and enact two new sections to chapter 15-39.1 of the North Dakota Century Code, relating to the composition and administrative authority of the teachers' fund for retirement board; to amend and reenact subsection 1 of section 54-07-01.2 of the North Dakota Century Code, relating to appointments to the teachers' fund for retirement board; and to repeal section 15-39.1-05 of the North Dakota Century Code, relating to management of the teachers' fund for retirement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-39.1 of the North Dakota Century Code is created and enacted as follows:

Board composition - Terms - Voting.

1. The authority to set policy for the fund rests in a board of trustees composed as follows:
 - a. The governor shall appoint from a list of three nominees submitted to the governor by the North Dakota education association two board members who are actively employed in full-time positions not classified as school administrators. A board member appointed under this subdivision who terminates employment may not continue to serve as a member of the board.
 - b. The governor shall appoint from a list of three nominees submitted to the governor by the North Dakota council of educational leaders one board member who is actively employed as a full-time school administrator. A board member appointed under this subdivision who terminates employment may not continue to serve as a member of the board.
 - c. The governor shall appoint from a list of three nominees submitted to the governor by the North Dakota retired teachers association two board members who are the retired members of the fund.
 - d. The state treasurer and the superintendent of public instruction.
2. All current appointees of the board shall serve the remainder of their term as members of the board until their terms expire and their successors are appointed. The first newly appointed board member under subdivision a of subsection 1 must be appointed to serve an initial term of four years. The first newly appointed board member under subdivision c of subsection 1 must be elected to serve an initial term of five years. Newly appointed board members shall serve a term of five years. Each newly appointed term begins on July first.

3. Each board member is entitled to one vote, and four members constitute a quorum. Four votes are required for resolution or action by the board.

SECTION 2. A new section to chapter 15-39.1 of the North Dakota Century Code is created and enacted as follows:

Board authority - Continuing appropriation. The board:

1. Has the powers and privileges of a corporation, including the right to sue and be sued in its own name. The venue of all actions to which the board is a party must be Burleigh County.
2. Shall establish investment policy for the trust fund under section 21-10-02.1. The investment policy must include:
 - a. Acceptable rates of return, liquidity, and levels of risk; and
 - b. Long-range asset allocation targets.
3. Shall arrange for actuarial and medical consultants. The board shall cause a qualified, competent actuary to be retained on a consulting basis. The actuary shall:
 - a. Make a valuation of the liabilities and reserves of the fund and a determination of the contributions required by the fund to discharge its liabilities and pay administrative costs;
 - b. Recommend to the board rates of employer and employee contributions required, based upon the entry age normal cost or other accepted actuarial method, to maintain the fund on an actuarial reserve basis;
 - c. Once every five years make a general investigation of the actuarial experience under the fund including mortality, retirement, employment turnover, and other items required by the board;
 - d. Recommend actuarial tables for use in valuations and in calculating actuarial equivalent values based on the investigation provided for in subdivision c; and
 - e. Perform other duties assigned by the board.
4. May pay benefits and consultant fees as necessary which are hereby appropriated from the fund.
5. Shall submit to the legislative council's employee benefits programs committee any necessary or desirable changes in statutes relating to the administration of the fund.
6. Shall determine appropriate levels of service to be provided to members, including benefits counseling and preretirement programs.
7. Shall, through resolution, inform the state investment board, which is the administrative board of the retirement and investment office, the levels of

services, goals, and objectives expected to be provided through the retirement and investment office.

¹¹ **SECTION 3. AMENDMENT.** Subsection 1 of section 54-07-01.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding sections 2-05-01, 4-18.1-04, 4-27-04, 6-01-03, 6-09-02.1, 12-55-01, 12-59-01, 15-21-17, 15-38-17, ~~45-39.1-05~~ section 1 of this Act, 15-65-02, 20.1-02-23, 23-01-02, 23-25-02, 36-01-01, 37-18.1-01, 50-06-05.6, 50-06.1-16, 54-34.3-10, 54-54-02, 55-01-01, 55-06-01, 61-02-04, and 61-28-03, all members of the following boards and commissions must, subject to the limitations of this section, be considered to have resigned from such boards and commissions effective January first of the first year of each four-year term of the governor:
 - a. The aeronautics commission.
 - b. The milk marketing board.
 - c. The dairy promotion commission.
 - d. The state banking board.
 - e. The state credit union board.
 - f. The advisory board of directors to the Bank of North Dakota.
 - g. The board of pardons.
 - h. The state parole board.
 - i. The state board of public school education.
 - j. The education standards and practices board and the administrator's professional practices board.
 - k. The board of trustees for the teachers' fund for retirement.
 - l. The educational telecommunications council.
 - m. The state game and fish advisory board.
 - n. The health council.
 - o. The air pollution control advisory council.
 - p. The board of animal health.
 - q. The administrative committee on veterans' affairs.

¹¹ Section 54-07-01.2 was also amended by section 7 of Senate Bill No. 2045, chapter 115.

- r. The committee on aging.
- s. The committee on employment of people with disabilities.
- t. The commission on the status of women.
- u. The North Dakota council on the arts.
- v. The state historical board.
- w. The Yellowstone-Missouri-Fort Union commission.
- x. The state water commission.
- y. The state water pollution control board.

SECTION 4. REPEAL. Section 15-39.1-05 of the North Dakota Century Code is repealed.

Approved April 1, 1997

Filed April 2, 1997

CHAPTER 171

SENATE BILL NO. 2139 (Senators C. Nelson, Krebsbach) (Representatives Sabby, Wardner)

TFFR ASSESSMENTS AND BENEFITS

AN ACT to amend and reenact subsection 1 of section 15-39.1-09 and subsection 2 of section 15-39.1-10 of the North Dakota Century Code, relating to assessments and computation of benefits under the teachers' fund for retirement; to provide for application; and to provide a statement of legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 15-39.1-09 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided in subsection 2 of section 15-39.1-10.3, every teacher is a member of the fund and must be assessed upon the teacher's salary ~~six~~ seven and seventy-five hundredths percent per annum, which must be deducted, certified, and paid monthly to the fund by the disbursing official of the governmental body by which the teacher is employed. Every governmental body employing a teacher shall pay to the fund ~~six~~ seven and seventy-five hundredths percent per annum of the salary of each teacher employed by it. The disbursing official of the governmental body shall certify the governmental body payments and remit the payments monthly to the fund.

¹² **SECTION 2. AMENDMENT.** Subsection 2 of section 15-39.1-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The amount of retirement benefits is one and ~~fifty-five~~ seventy-five hundredths percent of the final average monthly salary of the member multiplied by the number of years of credited service. For the purposes of this subsection, final average monthly salary means one thirty-sixth of the total of the member's highest annual salaries earned between July first of a calendar year and June thirtieth of the subsequent calendar year for any three years of service under the fund.

SECTION 3. APPLICATION OF ACT. Section 1 of this Act does not apply to existing contracts between school districts and their employees under which the school district pays the teacher contribution pursuant to subsection 2 of section 15-39.1-09. Section 2 of this Act applies only to individuals who begin receiving benefits from the fund under chapter 15-39.1 after June 30, 1997, and applies to those benefits payable after June 30, 1997.

¹² Section 15-39.1-10 was also amended by section 1 of House Bill No. 1144, chapter 172.

SECTION 4. INTENT. It is the intent of the legislative assembly that the one percent increase in the employer contribution contained in subsection 1 of section 15-39.1-09 be considered during the 1997-98 school district-employee salary negotiations.

Approved April 1, 1997
Filed April 2, 1997

CHAPTER 172

HOUSE BILL NO. 1144

(Government and Veterans Affairs Committee)
(At the request of the Teachers' Fund for Retirement)

TFFR BENEFITS

AN ACT to create and enact a new section to chapter 15-39.1 of the North Dakota Century Code, relating to postretirement benefit adjustments under the teachers' fund for retirement; to amend and reenact subsection 2 of section 15-39.1-10 of the North Dakota Century Code, relating to the computation of benefits under the teachers' fund for retirement; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³ **SECTION 1. AMENDMENT.** Subsection 2 of section 15-39.1-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The amount of retirement benefits is one and ~~fifty-five~~ sixty-one hundredths percent of the final average monthly salary of the member multiplied by the number of years of credited service. For the purposes of this subsection, final average monthly salary means one thirty-sixth of the total of the member's highest annual salaries earned between July first of a calendar year and June thirtieth of the subsequent calendar year for any three years of service under the fund.

SECTION 2. A new section to chapter 15-39.1 of the North Dakota Century Code is created and enacted as follows:

Postretirement adjustment. An individual who on June 30, 1997, is receiving monthly benefits from the fund on an account paid under this chapter or under former chapter 15-39 is entitled to receive an increase of thirty dollars per month.

SECTION 3. APPLICATION OF ACT. Section 1 of this Act applies only to individuals who begin receiving benefits from the fund under chapter 15-39.1 after June 30, 1997, and applies to those benefits payable after June 30, 1997. Section 2 of this Act applies to benefits payable after June 30, 1997.

Approved March 10, 1997
Filed March 10, 1997

¹³ Section 15-39.1-10 was also amended by section 2 of Senate Bill No. 2139, chapter 171.

CHAPTER 173**HOUSE BILL NO. 1051**

(Legislative Council)
(Education Finance Committee)

ALTERNATIVE HIGH SCHOOL REIMBURSEMENT

AN ACT to provide for the reimbursement of certain school districts having alternative high schools; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REIMBURSEMENT OF SCHOOL DISTRICTS WITH ALTERNATIVE HIGH SCHOOLS.

1. If any funds appropriated to the grants - foundation aid and transportation program for the 1995-97 biennium in section 1 of chapter 35 of the 1995 Session Laws remain after completion of the April 1, 1997, distribution provided for by section 15-40.1-05, the superintendent of public instruction shall distribute the funds to the Bismarck, Devils Lake, Fargo, Grand Forks, Jamestown, and Minot school districts in amounts equal to the payment shortages incurred by these districts during the 1993-95 biennium as a result of a miscalculation in the number of students in average daily membership in alternative high schools.
2. If sufficient funds are not available for the distribution provided in subsection 1, the superintendent of public instruction shall prorate the distribution required by that subsection.

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

Approved April 3, 1997

Filed April 3, 1997

CHAPTER 174

SENATE BILL NO. 2338

(Senators Freborg, G. Nelson)

PER STUDENT PAYMENTS AND EQUALIZATION FACTOR

AN ACT to amend and reenact sections 15-40.1-06, 15-40.1-07, and 15-40.1-08 of the North Dakota Century Code, relating to per student payments and the school district equalization factor; to provide for a legislative council study; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-40.1-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.1-06. Declaration of legislative intent - Educational support per student - School district equalization factor - Limitations.

1. It is the intent of the legislative assembly, not considering any separate and supplemental payments as may be provided by law, to support elementary and secondary education in this state from state funds based on the educational cost per student. In determining the educational cost per student, the following criteria may not be used:
 - a. Expenditures for capital outlay for buildings and sites, or debt service.
 - b. Expenditures from school activities and school lunch programs.
 - c. Expenditures for the cost of transportation, including the cost of schoolbuses.
2.
 - a. The educational support per student during the first year of the ~~1995-97~~ 1997-99 biennium must be one thousand ~~seven~~ nine hundred ~~fifty-seven~~ fifty-four dollars and for the second year of the 1997-99 biennium the educational support per student must be ~~one~~ two thousand ~~eight hundred sixty-two~~ thirty-two dollars and is the basis for calculating grants-in-aid on a per student basis as provided in sections 15-40.1-07 and 15-40.1-08.
 - b. School districts operating high schools not meeting the minimum curriculum as provided in section 15-41-24 or the teacher qualifications in section 15-41-25 must be supported in the amount of two hundred twenty dollars, which is the basis for calculating grants-in-aid on a per student basis as provided in section 15-40.1-07.
 - c. School districts operating high schools that are not accredited pursuant to the accreditation standards adopted by the superintendent of public instruction on July 1, 1991, or that become

unaccredited in any succeeding school year must be supported for the 1991-92 school year or for the first year that they become unaccredited in the amount of the educational support per student established in subdivision a, which is the basis for calculating grants-in-aid on a per student basis as provided in section 15-40.1-07, but those school districts are not entitled to the amounts resulting from applying the factors in that section. The amount of aid a school district is entitled to under this subsection for each high school that is not accredited must be reduced by two hundred dollars times the number of students in the school for the second school year that the high school is unaccredited, and an additional two hundred dollars per student in the unaccredited school for each additional year the school remains unaccredited. Any high school that becomes accredited is entitled to the per student payments provided for in section 15-40.1-07 for the entire school year in which the school becomes accredited.

- d. School districts operating elementary schools that are not accredited pursuant to the accreditation standards adopted by the superintendent of public instruction on July 1, 1992, or that become unaccredited in any succeeding school year must be supported for the 1992-93 school year or for the first year that they become unaccredited in the amount of the educational support per student established in subdivision a, which is the basis for calculating grants-in-aid on a per student basis as provided in section 15-40.1-08, except that the amount of aid that a school district is entitled to under this subsection for each elementary school that is unaccredited must be reduced by two hundred dollars times the number of students in the school each year that the elementary school is unaccredited. Any elementary school that becomes accredited is entitled to the per student payments provided for in section 15-40.1-08 for the entire school year in which the school becomes accredited.
3. In determining the amount of payments due school districts for tuition apportionment provided in section 15-44-03, and per student aid under this section, the amount of tuition apportionment, foundation aid, special education aid, and transportation aid for which a school district is eligible must be added together, and from that total, the following amounts must be subtracted:
 - a. The product of ~~twenty-eight~~ thirty-two mills for the ~~1995-96~~ school year and ~~thirty-two~~ mills for the ~~1996-97~~ school year times the latest available net assessed and equalized valuation of property of the school district. ~~For succeeding school years, the number of mills to be used in the computation must be determined as follows:~~
 - (1) ~~The superintendent of public instruction shall determine the percentage resulting from dividing the number of mills used in the computation the previous year by the state average school district general fund mill levy.~~
 - (2) ~~The superintendent of public instruction shall determine the amount of foundation aid estimated to be distributed during the current year and subtract from that the amount of foundation aid that was distributed during the prior year, and~~

divide the result by the amount of foundation aid distributed during the prior year.

- (3) The superintendent of public instruction shall multiply the quotient determined under paragraph 2 by forty percent and shall add this product to the percentage obtained in paragraph 4. This sum shall be multiplied times the state average school district general fund mill levy to determine the number of mills to be used in the computation provided in subdivision a. However, the number of mills used may not fall below thirty-two mills, nor rise above twenty-five percent of the state average school district general fund mill levy.
- b. The amount that the unobligated general fund balance of a school district on the preceding June thirtieth is in excess of three-fourths of the actual expenditures, plus an additional twenty thousand dollars.
4. No school district may receive foundation payments beyond the October payment unless the following reports have been filed with the superintendent of public instruction:
- a. Annual average daily membership report.
 - b. Annual school district financial report.
 - c. The September tenth fall enrollment report.
 - d. The personnel report forms for certified and noncertified employees.
5. No school district may receive the January foundation payment unless the taxable valuation and mill levy certifications are on file with the department of public instruction by December fifteenth.

SECTION 2. AMENDMENT. Section 15-40.1-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.1-07. High school per student payments - Amount - Proportionate payments. Payments must be made each year from state funds to each school district operating a high school and to each school district contracting to educate high school students in a federal school, subject to adjustment as provided in section 15-40.1-09, as follows:

1. For each high school district having under seventy-five students in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor 1.625 adjusted by ~~fifty~~ sixty-five percent of the difference between 1.625 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of high school students in grades nine through twelve registered in that school district, times the educational support per student as provided in section 15-40.1-06. Beginning July 1, ~~1996~~ 1998, the factor is 1.625 adjusted by ~~sixty-five~~ seventy-five percent of the difference between 1.625 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.

2. For each high school district having seventy-five or more, but less than one hundred fifty students in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor 1.335 adjusted by ~~fifty~~ sixty-five percent of the difference between 1.335 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of high school students in grades nine through twelve registered in that school district, times the educational support per student provided in section 15-40.1-06. Beginning July 1, ~~1996~~ 1998, the factor is 1.335 adjusted by ~~sixty-five~~ seventy-five percent of the difference between 1.335 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.
3. For each high school district having one hundred fifty or more, but less than five hundred fifty students in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor 1.24 adjusted by ~~fifty~~ sixty-five percent of the difference between 1.24 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of high school students in grades nine through twelve registered in that school district, times the educational support per student provided in section 15-40.1-06. Beginning July 1, ~~1996~~ 1998, the factor is 1.24 adjusted by ~~sixty-five~~ seventy-five percent of the difference between 1.24 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.
4. For each high school district having a total high school enrollment of five hundred fifty or more students in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor 1.14 adjusted by ~~fifty~~ sixty-five percent of the difference between 1.14 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of high school students in grades nine through twelve registered in that school district, times the educational support per student provided in section 15-40.1-06. Beginning July 1, ~~1996~~ 1998, the factor is 1.14 adjusted by ~~sixty-five~~ seventy-five percent of the difference between 1.14 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.
5. For high schools having an approved alternative education program, the amount of money resulting from multiplying the factor in:
 - a. Subsection 1 times the number of students registered in the alternative education program, times the educational support per student provided in section 15-40.1-06, if the alternative education program has less than seventy-five students in average daily membership.
 - b. Subsection 2 times the number of students registered in the alternative education program, times the educational support per student provided in section 15-40.1-06, if the alternative education program has seventy-five or more, but less than one hundred fifty students in average daily membership.

- c. Subsection 3 times the number of students registered in the alternative education program, times the educational support per student provided in section 15-40.1-06, if the alternative education program has one hundred fifty or more, but less than five hundred fifty students in average daily membership.
- d. Subsection 4 times the number of students registered in the alternative education program times the educational support per student as provided in section 15-40.1-06 if the alternative education program has five hundred fifty or more students in average daily membership.

Every high school district must receive at least as much in total payments as it would have received if it had the highest number of students in the next lower category. Payments may not be made unless four or more units of standard high school work approved by the superintendent of public instruction are offered during the current year, only certificated teachers have been employed, and the other standards prescribed by this chapter have been met. Payments must be made to the high school district in which the student is enrolled for graduation and units of approved vocational education in accordance with the provisions of chapter 15-20.1, and other courses approved by the superintendent of public instruction, earned in another high school district must be included to meet the minimum four required units. In the case of students enrolled in nonpublic schools for graduation or students enrolled in less than four units of standard high school work who are in their fourth year of high school coursework and who are enrolled in approved alternative high school curriculum programs, proportionate payments must be made to the public school district in which the student is enrolled for specific courses. School districts offering high school summer school programs are eligible for proportionate payments provided each course offered satisfies requirements for graduation, comprises at least as many clock hours as courses offered during the regular school term, and complies with rules adopted by the superintendent of public instruction. The superintendent may adopt rules regarding eligibility for school districts to receive proportionate payments for summer education programs. The proportionate payment made under this section during the biennium for high school summer school programs may not exceed one and one-half percent of the total amount appropriated by the legislative assembly for foundation aid and transportation aid during the biennium.

SECTION 3. AMENDMENT. Section 15-40.1-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.1-08. Elementary per student payments - Amount. Payments must be made from state funds to each school district operating an elementary school and to each school district contracting to educate elementary students in a federal school, employing teachers holding valid certificates or permits in accordance with section 15-47-46 and chapter 15-36, adjusted as provided in section 15-40.1-09, as follows:

1. For each one-room rural school, the amount of money resulting from multiplying the factor 1.28 adjusted by ~~fifty~~ sixty-five percent of the difference between 1.28 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of students in that school in grades one through eight in average daily membership, up to a maximum of sixteen students, times the educational support per student provided in section 15-40.1-06. There must be paid .9 times each additional student in its school in grades one through eight in average daily membership times the educational support per student provided in

section 15-40.1-06, except that no payment may be made for more than twenty students in average daily membership. If the one-room rural school is located in a school district with another elementary school, the weighting factor for the students in grades one through six must be based on the average daily membership in the district in grades one through six as provided in subsections 2 through 4. If the one-room rural school is located in a school district with another school that has students in grade seven or eight, the weighting factor for the students in grade seven or eight must be the same as that provided for in subsection 5. Beginning July 1, ~~1996~~ 1998, the factor is 1.28 adjusted by ~~sixty-five~~ seventy-five percent of the difference between 1.28 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.

2. For each elementary school in school districts having under one hundred students in average daily membership in grades one through six, the amount of money resulting from multiplying the factor 1.09 adjusted by ~~fifty~~ sixty-five percent of the difference between 1.09 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of students in that school in grades one through six in average daily membership in each classroom or for each teacher, times the educational support per student provided in section 15-40.1-06, except that no payment may be made for more than twenty-five students in average daily membership in each classroom or for each teacher. Beginning July 1, ~~1996~~ 1998, the factor is 1.09 adjusted by ~~sixty-five~~ seventy-five percent of the difference between 1.09 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.
3. For each elementary school in school districts having one hundred or more students in average daily membership in grades one through six, and provided the districts in which such schools are located have an average daily membership of less than one thousand elementary students in grades one through six, the amount of money resulting from multiplying the factor .905 adjusted by ~~fifty~~ sixty-five percent of the difference between .905 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of students in that school in grades one through six in average daily membership in each classroom or for each teacher times the educational support per student provided in section 15-40.1-06, except that no payment may be made for more than thirty students in average daily membership in each classroom or for each teacher. Beginning July 1, ~~1996~~ 1998, the factor is .905 adjusted by ~~sixty-five~~ seventy-five percent of the difference between .905 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.
4. For each elementary school in school districts having an average daily membership of one thousand or more elementary students in grades one through six, the amount of money resulting from multiplying the factor .95 adjusted by ~~fifty~~ sixty-five percent of the difference between .95 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of students in that school in grades one through six in average daily membership in each classroom or for each

- teacher times the educational support per student provided in section 15-40.1-06, except that no payment may be made for more than thirty students in average daily membership in each classroom or for each teacher. Beginning July 1, ~~1996~~ 1998, the factor is .95 adjusted by ~~sixty-five~~ seventy-five percent of the difference between .95 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.
5. For each of the above classes of elementary schools, except for one-room rural schools that are not located in a district with another school having students in grade seven or eight, there must be paid to each school the amount of money resulting from multiplying the factor 1.01 adjusted by ~~fifty~~ sixty-five percent of the difference between 1.01 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of students in that school in grades seven and eight in average daily membership in each classroom or for each teacher times the educational support per student provided in section 15-40.1-06, except that no payment may be made for more than thirty students in average daily membership in each classroom or for each teacher. Beginning July 1, ~~1996~~ 1998, the factor is 1.01 adjusted by ~~sixty-five~~ seventy-five percent of the difference between 1.01 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.
 6. For each elementary school having students under the compulsory age for school attendance, but not less than three years of age, in a special education program approved by the director of special education, the amount of money resulting from multiplying the factor 1.01 adjusted by ~~fifty~~ sixty-five percent of the difference between 1.01 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of special education students in that school under the compulsory age for school attendance in average daily membership in each classroom or for each teacher times the educational support per student provided in section 15-40.1-06. Beginning July 1, ~~1996~~ 1998, the factor is 1.01 adjusted by ~~sixty-five~~ seventy-five percent of the difference between 1.01 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.
 7. For each elementary school providing a kindergarten that is established according to provisions of section 15-45-01, the amount of money resulting from multiplying the factor .50 adjusted by ~~fifty~~ sixty-five percent of the difference between .50 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of students in that school in average daily membership in each classroom or for each teacher times the educational support per student, as provided under section 15-40.1-06, except that no payment may be made for more than twenty-five students in average daily membership in each classroom or for each teacher. The full per student payment may be made only to those kindergarten programs providing the equivalent of ninety full days of classroom instruction during any twelve-month period. Programs providing shorter periods of instruction during the same time period must receive a proportionately smaller per student payment. Beginning July 1, ~~1996~~ 1998, the factor is .50 adjusted by

~~sixty five~~ seventy-five percent of the difference between .50 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.

The superintendent of public instruction shall make proportionate payments to each public school district educating students who are also enrolled in nonpublic schools.

Every school district must receive at least as much in total payments for elementary students as it would have received if it had the highest number of students in the next lower category.

SECTION 4. LEGISLATIVE COUNCIL STUDY OF EDUCATION

FINANCE. The legislative council shall appoint a committee to study the financing of elementary and secondary schools and the availability of state support for school construction. The legislative council shall ensure that the committee contains a balanced representation. During the 1997-98 interim, the committee shall review the formulas used to equalize state aid including formulas for student transportation and special education, funding sources that would be alternatives to property tax, and any other issues related to the financing of elementary and secondary schools. The legislative council shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the fifty-sixth legislative assembly.

SECTION 5. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$50,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of developing data envelopment analysis for North Dakota school districts, integrating the data envelopment analysis into the schoolmaps system, and updating the profiles of North Dakota school districts, for the biennium beginning July 1, 1997, and ending June 30, 1999.

Approved April 8, 1997
Filed April 8, 1997

CHAPTER 175

HOUSE BILL NO. 1146

(Education Committee)

(At the request of the Superintendent of Public Instruction)

SCHOOL AID IN COOPERATING AND REORGANIZED DISTRICTS

AN ACT to amend and reenact sections 15-40.1-07.3, 15-40.1-07.4, 15-40.2-01, 15-40.2-04, 15-40.3-01, 57-15-13, and 57-15-14.5 of the North Dakota Century Code and section 2 of chapter 701 of the 1989 Session Laws of North Dakota, as amended by section 1 of chapter 656 of the 1991 Session Laws of North Dakota and by section 26 of chapter 3 of the 1993 Session Laws of North Dakota, relating to per student payments for cooperating and reorganized school districts, open enrollment procedures, school district tax levies, education technology supervisors, and special reserve fund withdrawals; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-40.1-07.3 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.1-07.3. ~~High school per~~ Per student payments - Reorganization of school districts.

1. If any school district receiving per student payments calculated under section 15-40.1-07 reorganizes with another school district under chapter 15-27.3 or 15-27.6 before August 1, 1997, the school district resulting from the reorganization is entitled to receive the same ~~per-pupil~~ per student payments for each high school ~~pupil~~ student as each separate school district received for each high school ~~pupil~~ student prior to the reorganization, for a period of four years.
2. If any school district receiving per student payments calculated under this chapter reorganizes with another school district under chapter 15-27.3 or 15-27.6 after July 31, 1997, the school district resulting from the reorganization is entitled to receive the same per student payments for each high school and elementary student as each separate school district received for each high school and elementary student prior to the reorganization, for a period of four years.
3. The weighting factor for each district will be adjusted proportionately over a period of two years, following the period of time provided in subsection 1 or 2, until the adjusted weighting factor equals the weighting factor for the combined enrollment resulting from the reorganization.

SECTION 2. AMENDMENT. Section 15-40.1-07.4 of the North Dakota Century Code is amended and reenacted as follows:

15-40.1-07.4. ~~High school per~~ Per student payments - Cooperating districts.

1. If any school district receiving payments under section 15-40.1-07 cooperates with another school district for the joint provision of education services under a plan approved by the superintendent of public instruction and effective before July 1, 1997, each cooperating district is entitled to receive, for a period of four years, at least the same per student payment for each high school student as the district received prior to initiation of the cooperative plan.
2. If, on or after July 1, 1997, any school district receiving payments under this chapter cooperates with another school district for the joint provision of education services under a plan approved by the superintendent of public instruction, each cooperating district is entitled to receive, for a period of four years, at least the same per student payment for each high school and elementary student as the district received prior to initiation of the cooperative plan.

¹⁴ **SECTION 3. AMENDMENT.** Section 15-40.2-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.2-01. Transfer of ~~pupils~~ students to other districts or institutions - Tuition agreements - Student discretion upon cessation of educational services.

1. The school board of any district may send kindergarten, elementary, or high school ~~pupils~~ students into another school district or to an accredited institution of another state when, because of shorter distances and other conveniences, it is to the best interests of the school district to do so, and in such instances the board may pay the tuition of ~~such pupils~~ the students to the district or institution to which they are sent. The school board may arrange, and when petitioned to do so by a majority of qualified electors of the district, shall arrange with the school boards of other districts or with the institutions, to send ~~pupils~~ students to such other districts or institutions who can be taught conveniently therein, and for the payment of their tuition and for furnishing and paying for their transportation to and from such other schools or institutions.
2. If a school district does not provide educational services to an entire grade level, the students in that grade level may attend school at a public school of their choice, outside their district of residence without going through the procedures outlined in section 15-40.2-05. The school district of residence shall pay tuition to the admitting school district. ~~A student may exercise the provisions of this subsection whether the school district of residence ceased to provide the required grade level before or after August 1, 1995.~~ For purposes of determining whether educational services are provided to an entire grade level, the several school districts cooperating with each other for the joint provision of educational services under a plan approved by the superintendent of public instruction must be considered to be a single district.

¹⁴ Section 15-40.2-01 was also amended by section 2 of House Bill No. 1131, chapter 160.

SECTION 4. AMENDMENT. Section 15-40.2-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.2-04. Nonresident tuition payments mandatory - Payments are exclusive.

1. a. Except as provided in this subsection, any school district that admits nonresident students to its schools, as provided by this chapter, shall charge tuition for those students. School districts have the option of charging tuition for nonresident students enrolled in an approved alternative education program. The whole amount of the tuition must be paid by the district from which the student is admitted, in accordance with section 15-40.2-03, or by the student's parent or guardian, in accordance with section 15-40.2-06.
 - b. Except as otherwise provided, any school district that fails to charge and collect tuition for nonresident students as provided for in section 15-40.2-03 and this section shall forfeit foundation payments for those nonresident students for whom tuition is not paid. A school district may accept a nonresident student from another school district in this state which offers the same grade level as that in which the student is enrolled, without a charge and collection of tuition if a written agreement is made between the sending and receiving districts. For purposes of determining whether the same grade level is offered, the several school districts cooperating with each other for the joint provision of educational services under a plan approved by the superintendent of public instruction must be considered to be a single district. The written agreement must specify whether transportation is to be provided and if so, by which district. If a school district of residence does not provide transportation to the student, it may be provided by the admitting district and the admitting district is then entitled to state payments for the transportation of the student. No written agreement is necessary if the nonresident student is enrolled in an approved alternative education program for which no tuition is charged. A school district may accept a nonresident student described in section 15-40.3-07 from another school district in this state without a charge and collection of tuition and without a written agreement.
 - c. No school district may charge or collect from any nonresident student, parent or guardian of a nonresident student, or the district of the student's residence, any registration, textbook, or laboratory fee, or any other fee or charge which is not charged to or for all resident students.
2. For purposes of subsection 1 and all statutory provisions relating to open enrollment, the member districts of a consortium must be treated as a single school district.

SECTION 5. AMENDMENT. Section 15-40.3-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.3-01. Open enrollment - Procedure. A student's parent or legal guardian who wishes to enroll the student in a North Dakota school district other than the student's district of residence shall, not later than February first of the school year preceding the year of enrollment, apply to the school board of the

student's district of residence, on forms provided by the superintendent of public instruction, for approval to enroll the student in a district other than the student's district of residence. By March first of the school year preceding the year of enrollment, the school board of the district of residence shall act on the application, notify the parent or legal guardian of the board's decision within five days, and if the application is approved, immediately transmit the application to the admitting district. By April first, the board of the admitting district shall approve or disapprove the application. The board of the admitting district shall notify the board of the district of residence and the student's parent or legal guardian within five days regarding its decision. Notice of intent to enroll in the admitting district obligates the student to attend the admitting district during the following school year, unless the school boards of the resident and the admitting districts agree in writing to allow the student to transfer back to the resident district, or the student's parents or guardians change residence to another district. All applications must be reviewed in the order that they are received. A student whose school district of residence does not offer the grade level in which the student requires enrollment may not participate in open enrollment. For purposes of determining whether the grade level in which a student requires enrollment is offered, the several school districts cooperating with each other for the joint provision of educational services under a plan approved by the superintendent of public instruction must be considered to be a single district. A child placed at a group or residential care facility or a residential treatment center in accordance with section 15-40.2-08 is not eligible for open enrollment under this section. The school board of a school district of residence and of an admitting district shall waive the application, consideration, and approval dates in this section for any student who, together with the student's parent or legal guardian, moves from the student's school district of residence to another school district ~~after February first~~ and who wishes to enroll in a school district, other than the district to which the student moved; ~~for the following year.~~

SECTION 6. AMENDMENT. Section 57-15-13 of the North Dakota Century Code is amended and reenacted as follows:

57-15-13. School district tax levies. School district taxes must be levied by the governing body of each school district on or before the ~~last~~ fifteenth day of ~~July~~ August of each year. The governing body of the school district may amend its tax levy and budget for the current fiscal year on or before the tenth day of October of each year but the certification must be filed with the county auditor within the time limitations under section 57-15-31.1. Taxes for school district purposes must be based upon an itemized budget statement which must show the complete expenditure program of the district for the current fiscal year and the sources of the revenue from which it is to be financed. The school board of each public school district, in levying taxes, is limited by the amount necessary to be raised for the purpose of meeting the appropriations included in the school budget of the current fiscal year, and the sum necessary to be provided as an interim fund, together with a tax sufficient in amount to pay the interest on the bonded debt of the district and to provide a sinking fund to pay and discharge the principal thereof at maturity.

¹⁵ **SECTION 7. AMENDMENT.** Section 57-15-14.5 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

¹⁵ Section 57-15-14.5 was also amended by section 38 of House Bill No. 1299, chapter 108.

57-15-14.5. Long-distance learning and educational technology levy - Voter approval.

1. The school board of a public school district may, upon approval by a majority vote of the electors of the school district at any regular or special election, dedicate a tax levy for purposes of this section not to exceed five mills on the dollar of taxable valuation of property within the district.
2. All revenue accruing from the levy under this section must be used only for purposes of establishing and maintaining long-distance learning and purchasing and maintaining educational technology. For purposes of this section, educational technology includes computer software, computers and computer networks, ~~and~~ other computerized equipment, which must be used for student instruction, and the salary of a staff person to supervise the use and maintenance of educational technology.
3. If the need for the fund terminates, the governing board of the public school district shall order the termination of the levy and shall transfer the remaining balance to the general fund of the school district.

¹⁶ **SECTION 8. AMENDMENT.** Section 2 of chapter 701 of the 1989 Session Laws of North Dakota, as amended by section 1 of chapter 656 of the 1991 Session Laws of North Dakota and by section 26 of chapter 3 of the 1993 Session Laws of North Dakota, is amended and reenacted as follows:

SECTION 2. EXPIRATION DATE. This Act is effective through June 30, ~~1997~~ 2001, and after that date is ineffective.

SECTION 9. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 27, 1997
Filed March 27, 1997

¹⁶ Section 57-19-06 was repealed by section 4 of House Bill No. 1292, chapter 489.

CHAPTER 176

HOUSE BILL NO. 1246

(Representatives Drovdal, R. Kelsch, Monson)
(Senators Freborg, Goetz)

SPECIAL EDUCATION PER STUDENT PAYMENTS

AN ACT to amend and reenact section 15-40.1-07.6 of the North Dakota Century Code, relating to special education per student payments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-40.1-07.6 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.1-07.6. Per student payments - Special education.

1. ~~Each~~ Except as provided in subsection 2, each biennium; the superintendent of public instruction shall distribute moneys appropriated by the legislative assembly for per student special education payments to each school district in the state on the basis of students in average daily membership. The superintendent of public instruction shall forward the payments, as calculated under subsection 3 of section 15-40.1-06, to eligible school districts in the same manner and at the same time that the superintendent distributes foundation aid payments. For purposes of this section, "special education" means the provision of special services to students who have special needs, including students who are gifted and talented. Expenditures under this section may not conflict with nonsupplanting and maintenance of effort provisions under the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq.
2. The superintendent of public instruction may, upon the written request of a school district, forward all or a portion of the moneys for which the school district is eligible under this section directly to the special education unit of which the school district is a member.

Approved March 23, 1997
Filed March 24, 1997

CHAPTER 177

SENATE BILL NO. 2029

(Legislative Council)
(Budget Committee on Human Services)
(Senators Nalewaja, Thane, Lips)
(Representatives Carlisle, Thoreson, Clark)

LIMITED ENGLISH STUDENT ASSISTANCE PAYMENTS

AN ACT to create and enact a new section to chapter 15-40.1 of the North Dakota Century Code, relating to payments for students having limited English language skills.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-40.1 of the North Dakota Century Code is created and enacted as follows:

Per student payments - Limited English proficient students.

1. In addition to any other payments provided for by this chapter, each school district is entitled to receive three hundred dollars for each student who has been assessed by the student's school district and determined to have negligible or very limited English language skills as evidenced by a classification of level I or II using the Woodcock-Munoz language survey.
2. In order to receive the full payment provided for in this section, a school district must complete the student assessment required by subsection 1 and forward the results to the superintendent of public instruction on or before October first of each school year. The superintendent shall distribute the payments no later than May thirtieth of each school year. The superintendent shall prorate payments under this section for any students registering in the school district after October first or departing the school district prior to the completion of the school year.

SECTION 2. PAYMENTS FOR STUDENTS HAVING LIMITED ENGLISH LANGUAGE SKILLS. For the purpose of providing payments to school districts educating students qualifying under section 1 of this Act for the biennium beginning July 1, 1997, and ending June 30, 1999, the superintendent of public instruction shall use up to \$300,000 of any moneys appropriated in House Bill No.1013, as approved by the fifty-fifth legislative assembly, for equity payments to school districts.

Approved April 17, 1997
Filed April 17, 1997

CHAPTER 178

HOUSE BILL NO. 1393

(Representatives Dalrymple, Hausauer, Byerly)
(Senators Freborg, Goetz)

HIGH SCHOOL SUPPLEMENTAL PAYMENTS

AN ACT to create and enact a new section to chapter 15-40.1 of the North Dakota Century Code, relating to supplemental payments to high school districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-40.1 of the North Dakota Century Code is created and enacted as follows:

Supplemental payment to high school districts. The superintendent of public instruction shall calculate the average valuation of property per student by dividing the number of students in average daily membership in grades one through twelve in a high school district into the district's latest available net assessed and equalized taxable valuation of property. If the quotient is less than the latest available statewide average taxable valuation per student and if the district's educational expenditure per student is below the most recent available statewide average cost of education per student, the superintendent of public instruction shall:

1. Determine the difference between the latest available statewide average taxable valuation per student and the average valuation per student in the high school district;
2. Multiply the result determined under subsection 1 by the number of students in average daily membership in grades one through twelve in the high school district;
3. Multiply the result determined under subsection 2 by the number of general fund mills levied by the district in excess of one hundred fifty, provided that any mills levied by the district which are in excess of two hundred ten may not be used in this calculation; and
4. Multiply the result determined under subsection 3 by thirty percent. The result is the supplemental payment to which a high school district is entitled, in addition to any other amount provided under chapter 15-40.1.

Approved April 8, 1997
Filed April 8, 1997

CHAPTER 179

SENATE BILL NO. 2173

(Senators Freborg, Andrist, O'Connell)
(Representatives Grosz, Monson)

SCHOOL TERM LENGTH

AN ACT to amend and reenact sections 15-40.1-09, 15-47-04, and 15-47-33 of the North Dakota Century Code, relating to the length of the school term; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-40.1-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.1-09. Application for payments - Verification and determination of payments for high school students - Report of county superintendent of schools - Appeal. Immediately upon the completion of the registration of students at the beginning of each school term and in no event later than September tenth of each year, the business manager of each school district within or without this state which is claiming payments from state funds under the provisions of this chapter shall file with the county superintendent of schools a claim on a form prescribed by the superintendent of public instruction stating the number of students registered in high school and elementary grades for which payments are claimed, and such other information as may be reasonably requested by the superintendent of public instruction. Not later than December first, the superintendent of public instruction shall certify to the office of management and budget a list of the school districts and schools not operated by school districts entitled to payments from state funds, together with the amounts to which the several districts and schools are entitled. Per student aid as provided under sections 15-40.1-06, 15-40.1-07, and 15-40.1-08 must be computed on the basis of the previous year's average daily membership less the number of students attending school during the current school year in another district under the provisions of open enrollment or the current year's fall enrollment, whichever provides the greatest payment, for all current grade levels. Adjustments must be made in the subsequent year according to a comparison between the average daily membership for the year for which the adjusted payment is being made and the year preceding the year for which the adjusted payment is being made, whichever is greater, for grade levels that existed in both years. The greater of the two preceding years' average daily membership must be used in computing any adjustment in a district's foundation aid payments. For purposes of this chapter, "average daily membership" ~~shall mean~~ means the total days all students in a given school are in attendance, including two days set aside for the North Dakota education association ~~convention, plus any instructional conference, three holidays selected from those~~ listed in subsections 2 through 10 of section 15-38-04.1 which have been ~~decided upon after~~ selected by the school board in consultation with the teachers, the total days all students are absent, and the up to two full days during which parent-teacher conference days authorized in section 15-47-33 conferences are held, divided by one hundred eighty days. School districts educating children of agricultural migratory workers or offering high school summer school programs during the months of June, July, and August shall not be restricted to payments for a one hundred eighty-day school term.

Immediately upon the termination of the school ~~term~~ year, and in no event later than July fifteenth of each year, the business manager of each school district within or without this state which has received payments from state funds under the provisions of this chapter shall file with the county superintendent of schools a verified statement of the name, residence, and membership of elementary and high school students as provided for in this section, and number of units of high school work taken by each high school student enrolled during the previous school year. The statement shall be attested to by the county superintendent of schools. The county superintendent shall investigate the validity of the statement and shall determine the residence and other qualifications of each student named in the statement. The county superintendent shall certify to the superintendent of public instruction on or before September first of each year the number of enrolled students in each district in the county for the previous school year upon which any adjustment may be based as provided in this section. If any statement is disallowed in whole or in part, notice of the disallowance and the names of students who are disallowed shall be reported to the superintendent of public instruction and to the district filing the statement. Any district may appeal to the superintendent of public instruction from the determination of the county superintendent of schools on or before September fifteenth in the year in which the determination is made. The superintendent of public instruction may change or modify the determination of the county superintendent if the evidence submitted by the district warrants a modification. The judgment of the superintendent of public instruction shall be final.

SECTION 2. AMENDMENT. Section 15-47-04 of the North Dakota Century Code is amended and reenacted as follows:

15-47-04. "School year"; ~~"month", and "week"~~ defined. The school year must begin on the first day of July and must close on the thirtieth day of June of the following year. ~~A school month consists of twenty days, and a school week consists of five days.~~

¹⁷ **SECTION 3. AMENDMENT.** Section 15-47-33 of the North Dakota Century Code is amended and reenacted as follows:

15-47-33. Length of elementary and secondary school year term.

1. All elementary and secondary schools in this state shall provide for a school term of at least one hundred eighty days ~~of classroom instruction during each school term.~~ Any three apportioned as follows:
 - a. One hundred seventy-three full days of instruction;
 - b. Three holidays selected from those listed in subsections 2 through 10 of section 15-38-04.1 which have been decided upon after selected by the school board in consultation with the district teachers; any two days, or fractions of days not to exceed a total of two days, which are devoted to;
 - c. Two days for the attendance of teachers at the North Dakota education association instructional conference; and

¹⁷ Section 15-47-33 was also amended by section 1 of House Bill No. 1055, chapter 183.

- d. Up to two full days during which parent-teacher conferences and which are selected by the local school board after consultation with the teachers, and any day in which classes cannot be held because of acts of God, epidemic, or failure of physical facilities must be included in the one hundred eighty days provided for in this section and teachers must be paid therefor are held.
2. A full day of instruction:
- a. Consists of at least five and one-half hours of instruction time for elementary students; and
- b. Consists of at least six hours of instruction time for high school students.

SECTION 4. EMERGENCY. Section 2 of this Act is declared to be an emergency measure.

Approved April 8, 1997
Filed April 8, 1997

CHAPTER 180**SENATE BILL NO. 2031**

(Legislative Council)
(Education Finance Committee)

SCHOOL TRANSPORTATION AID

AN ACT to amend and reenact section 15-40.1-18 of the North Dakota Century Code, relating to state transportation payments to school districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-40.1-18 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.1-18. State transportation payments to school districts. The superintendent of public instruction shall determine the total amount of payments to be made to the school districts for transportation aid. The office of management and budget shall pay the sum certified by the superintendent of public instruction to each school district. Payments must be made in the same manner and at the same time as other payments from the state to school districts are made, as provided in section 15-40.1-05. No school district may receive more than ninety percent of the actual costs it incurs in the provision of transportation services. For purposes of this section, actual costs include the transportation operating expenditures reported to the superintendent of public instruction for the most recent year plus the eight-year average cost of transportation equipment determined by the superintendent of public instruction. Any district that has contracted for transportation services, however, may determine its actual costs for the first year it provides its own transportation services by using the statewide average cost of transportation during that first year.

Approved March 21, 1997

Filed March 21, 1997

CHAPTER 181

HOUSE BILL NO. 1169

(Representatives Clark, Kunkel, Wardner)
(Senators Nalewaja, O'Connell, Wogsland)

SIGN LANGUAGE HIGH SCHOOL ELECTIVE

AN ACT relating to American sign language as an elective at the high school level.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. American sign language - High school elective. American sign language may be offered as an elective at the high school level, in accordance with rules adopted by the superintendent of public instruction.

Approved March 23, 1997
Filed March 24, 1997

CHAPTER 182

SENATE BILL NO. 2033

(Legislative Council)
(Education Services Committee)

POSTSECONDARY ENROLLMENT OPTIONS PROGRAM

AN ACT to provide for a postsecondary enrollment options program; and to amend and reenact subdivision q of subsection 1 of section 28-32-01 of the North Dakota Century Code, relating to the rulemaking authority of the superintendent of public instruction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Postsecondary enrollment options program. Any North Dakota student enrolled in grade eleven or twelve in a public high school is eligible to receive high school and postsecondary credit for the successful completion of an academic course offered by any postsecondary institution accredited by a regional accrediting organization or a vocational course offered by a postsecondary institution in a program accredited by a national or regional accrediting organization recognized by the United States department of education.

SECTION 2. Permission to enroll - Notification - Credits. Before enrolling in a course for credit under section 1 of this Act, the student must obtain written permission from the student's school district superintendent. The student's school district superintendent shall determine the number of credits for which the student is eligible and shall include the number on the permission document granting permission required by this section. For purposes of determining credit, a three-semester hour course offered by a postsecondary institution is equivalent to a full semester high school course. Upon the student's successful completion of the course, the postsecondary institution shall notify the student's school district superintendent of that fact.

SECTION 3. Costs of attendance - Responsibility of student. The student and the student's parent or legal guardian are responsible for all costs of attendance at a postsecondary institution under sections 1 through 6 of this Act. For purposes of this section, "costs" include tuition, fees, textbooks, materials, equipment, and other necessary charges related to the course in which the student has enrolled.

SECTION 4. Transportation - Responsibility of student. The student and the student's parent or legal guardian are responsible for transportation arrangements and all costs of transportation associated with a student's attendance at a postsecondary institution under sections 1 through 6 of this Act.

SECTION 5. Foundation aid - Extracurricular activities. A student attending a postsecondary institution under sections 1 through 6 of this Act is deemed to be in attendance at the student's school district of residence for purposes of calculating foundation aid and for purposes relating to the student's eligibility to participate in high school extracurricular activities.

SECTION 6. Courses - Statutory and regulatory exemption. The courses for which dual high school and postsecondary credit are available under sections 1 through 6 of this Act are postsecondary courses and are exempt from any statutory or regulatory provisions otherwise applicable to high school courses and to the persons by whom high school courses are taught.

¹⁸ **SECTION 7. AMENDMENT.** Subdivision q of subsection 1 of section 28-32-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- q. The superintendent of public instruction, except with respect to rules prescribed under section 15-21-07 ~~and~~, rules implementing chapter 15-22, and rules relating to sections 1 through 6 of this Act.

Approved March 19, 1997

Filed March 19, 1997

¹⁸ Section 28-32-01 was also amended by section 1 of Senate Bill No. 2398, chapter 449; section 8 of Senate Bill No. 2336, chapter 157; section 1 of House Bill No. 1042, chapter 278; section 6 of Senate Bill No. 2045, chapter 115; section 1 of House Bill No. 1183, chapter 451; section 2 of House Bill No. 1158, chapter 277; and section 24 of Senate Bill No. 2046, chapter 51.

CHAPTER 183

HOUSE BILL NO. 1055

(Legislative Council)
(Education Services Committee)
(Representative Oban)

TEACHER CONFERENCE COMPENSATORY TIME

AN ACT to amend and reenact section 15-47-33 of the North Dakota Century Code, relating to compensatory time for parent-teacher conferences; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁹ **SECTION 1. AMENDMENT.** Section 15-47-33 of the North Dakota Century Code is amended and reenacted as follows:

15-47-33. Length of elementary and secondary school year term. All elementary and secondary schools in this state shall provide at least one hundred eighty days of classroom instruction during each school term. Any three holidays selected from those listed in subsections 2 through 10 of section 15-38-04.1 which have been decided upon after consultation with the teachers; ¹ any two days, or fractions of days not to exceed a total of two days, which are devoted to parent-teacher conferences or which are deemed by the school board to be compensatory time for parent-teacher conferences held outside normal school hours and which are selected by the local school board after consultation with the teachers; ² and any day in which classes cannot be held because of acts of God, epidemic, or failure of physical facilities must be included in the one hundred eighty days provided for in this section and teachers must be paid therefor.

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

Approved April 4, 1997

Filed April 4, 1997

¹⁹ Section 15-47-33 was also amended by section 3 of Senate Bill No. 2173, chapter 179.

CHAPTER 184

HOUSE BILL NO. 1402

(Representatives Christenson, Maragos, Oban)

ELEMENTARY TEACHER QUALIFICATIONS

AN ACT to amend and reenact subsection 4 of section 15-47-46 of the North Dakota Century Code, relating to the qualifications of persons teaching kindergarten through grade eight.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁰ **SECTION 1. AMENDMENT.** Subsection 4 of section 15-47-46 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. A teacher who holds a teaching certificate and meets the requirements of the superintendent of public instruction may teach special education, foreign language, art, music, physical education, business education, and computer education in kindergarten through grade eight.

Approved March 23, 1997

Filed March 24, 1997

²⁰ Section 15-47-46 was also amended by section 10 of Senate Bill No. 2046, chapter 51.

CHAPTER 185

SENATE BILL NO. 2312

(Senators Holmberg, C. Nelson, W. Stenehjem)
(Representatives Berg, Kliniske, Poolman)

POSTSECONDARY STUDENT SCHOLARSHIPS

AN ACT to amend and reenact sections 15-62.2-00.1 and 15-62.2-03.3 of the North Dakota Century Code, relating to scholarships for postsecondary students.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-62.2-00.1 of the North Dakota Century Code is amended and reenacted as follows:

15-62.2-00.1. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Eligible candidate" means a graduate of a high school in this state or a resident of this state for tuition purposes whose assessment composite scores on the test of academic achievement administered by the American college testing program place the student in at least the ninety-fifth percentile of all students taking the test ~~for~~ by November first of the year preceding January first of the year in which the student is applying for a scholarship, and who ranks in the upper twentieth percentile of the student's high school class.
2. "Eligible institution" means an accredited public or nonprofit private postsecondary institution in this state.
3. "Full-time resident student" means a person who is a graduate of a high school in this state or who is a resident of this state for tuition purposes and who is enrolled at an eligible institution carrying a course of study which is "full time" as defined by the eligible institution.
4. "High school class rank" means the position a scholarship candidate holds in the candidate's graduating class, ~~as of the seventh semester of the candidate's high school program~~ determined by the state board of higher education.
5. "Scholar" means a full-time resident student who is awarded a scholarship or who has previously received a scholarship.
6. "Scholarship" means a financial award granted to a state scholar as determined by this chapter.

SECTION 2. AMENDMENT. Section 15-62.2-03.3 of the North Dakota Century Code is amended and reenacted as follows:

15-62.2-03.3. Selection of scholars. All eligible candidates must be ranked by their composite scores on the test of academic achievement administered by the American college testing program. If two or more eligible students have the same scores, they must be ranked by their high school class rank calculated on a percentile basis. Scholarships must be offered to students in descending order according to this ranking until available funds have been expended, or until the pool of eligible applicants has been exhausted. Scholarships must be awarded in ~~April~~ January of each year for the following academic year, or as soon thereafter as practical.

Approved March 21, 1997

Filed March 21, 1997

CHAPTER 186

HOUSE BILL NO. 1315

(Representatives Wilkie, Nichols, Warner, D. Johnson)
(Senators DeMers, LaFountain)

INDIAN SCHOLARSHIP ELIGIBILITY

AN ACT to amend and reenact sections 15-63-02, 15-63-03, and 15-63-04 of the North Dakota Century Code, relating to eligibility of candidates for scholarships awarded by the state board for Indian scholarships.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-63-02 of the North Dakota Century Code is amended and reenacted as follows:

15-63-02. Duties of board. The state board for Indian scholarships shall:

1. Award scholarship grants as provided in this chapter.
2. Make necessary rules ~~and regulations~~ and establish standards, requirements, and procedures for the administration of this chapter.
3. Encourage ~~persons of Indian blood~~ members of Indian tribes to attend and be graduated from any institution of higher learning or state vocational education program within ~~North Dakota~~ this state, and to make application for scholarships.

SECTION 2. AMENDMENT. Section 15-63-03 of the North Dakota Century Code is amended and reenacted as follows:

15-63-03. Number and nature of scholarships. The state board for Indian scholarships shall provide scholarships each year for resident ~~persons of at least one-fourth degree of Indian blood or for enrolled members of federally recognized Indian tribes now resident in North Dakota~~ members of federally recognized Indian tribes to entitle persons so selected to enter and attend any institution of higher learning or state vocational education program within ~~North Dakota~~ this state upon compliance with all requirements for admission and to pursue any course or courses offered in such institutions or programs.

SECTION 3. AMENDMENT. Section 15-63-04 of the North Dakota Century Code is amended and reenacted as follows:

15-63-04. Eligibility of candidates - Determination. The initial and continuing scholarship eligibility of ~~resident persons of one-fourth degree of Indian blood or state residents who are enrolled members of federally recognized Indian tribes now resident in North Dakota~~ enrolled members of federally recognized Indian tribes must be determined by the state board for Indian

scholarships after the candidate has gained admission to any institution of higher learning or state vocational education program within ~~North Dakota~~ this state and has had this fact certified to the board. Factors to be considered in the award of these scholarships are the candidate's ~~health, character,~~ financial need, and probable and continuing success as a student.

Approved March 23, 1997

Filed March 24, 1997

ELECTIONS

CHAPTER 187

SENATE BILL NO. 2094

(Judiciary Committee)

(At the request of the Secretary of State)

BALLOT MEASURE ANALYSES PUBLICATION AND PRINTING

AN ACT to amend and reenact sections 16.1-01-07 and 16.1-06-09 of the North Dakota Century Code, relating to publication of ballot measure analyses and printing and depositing of measure ballots.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-01-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-01-07. Constitutional amendments and other questions to be advertised - Notification by secretary of state - Manner of publishing. Whenever a proposed constitutional amendment or other question is to be submitted to the people of the state for popular vote, the secretary of state shall, not less than fifty-five days before the election, certify the amendment or other question to each county auditor and each auditor shall cause notice thereof to be included in the notice required by section 16.1-13-05. Questions to be submitted to the people of a particular county must be advertised in the same manner.

The secretary of state shall, at the same time the secretary of state certifies notice to the county auditors of the submission of a constitutional amendment or other question, certify the ballot form for such questions. The ballot form must conform to the provisions of section 16.1-06-09 and must be used by all county auditors in preparing ballots for submission to the electorate of each county and in the preparation of sample ballots. Sample ballots must conform in form and style to samples of such ballots contained in the legal publications handbook prepared under subsection 5 of section 46-01-02. Any requirements in this title that a sample ballot be published will be met by the publication of either the paper ballot or the ballot as it will appear to persons using a voting machine, depending upon the method of voting used in the area involved. Absentee voter ballots may not be considered in determining which method of voting is used in an area. If both paper ballots and voting machines are used in an area, both forms must be published as sample ballots to meet publication and notice requirements. ~~At the same time as~~ For two consecutive weeks before the sample ballot is published, an analysis of any constitutional amendment, initiated measure, or referred measure, written by the secretary of state after consultation with the attorney general, must be published in columns to enable the electors to become familiar with the effect of the proposed constitutional amendment or initiated or referred measure; ~~in addition to the sample ballot listing~~ ballot titles.

SECTION 2. AMENDMENT. Section 16.1-06-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-06-09. Constitutional amendments and initiated and referred measures - Placed on separate ballot - Manner of stating question - Explanation of effect of vote - Order of listing. Constitutional amendments or measures, initiated measures, and referred measures, duly certified to the county auditor by the secretary of state, or any other question or measure to be voted on, except the election of public officers at any primary, general, or special election including officers subject to a recall petition, must be printed on a separate ballot and must be deposited in a box separate from that provided to receive the ballots for public officers. A constitutional amendment, initiated or referred measure, or other question must, unless otherwise determined by the secretary of state, be stated in full in a legible manner on the paper ballot or the ballot card when using an electronic voting system purchased after June 30, 1985, and the ballot label when using an electronic voting system purchased before July 1, 1985. If the secretary of state concludes the amendment or measure is too long to make it practical to print in full, the secretary of state in consultation with the attorney general shall cause to be printed a short, concise summary, which must fairly represent the substance of the constitutional amendment, initiated, or referred measure. After the foregoing statement, the secretary of state shall cause to be printed another short, concise statement of the effect of an affirmative or negative vote on the constitutional amendment, initiated, or referred measure. This explanatory statement must be drafted by the secretary of state in consultation with the attorney general. The words "Yes" and "No" must be printed on the ballot at the close of the statement regarding the effect of an affirmative or negative vote, in separate lines with a square formed of black lines after each statement in which the voter may indicate by a cross or other mark how the voter desires to vote on the question. Where two or more amendments or questions are to be voted on, they must be printed on the same ballot.

The measures to be submitted to the electors must be grouped and classified as constitutional measures, initiated statutes, or referred statutes and must be placed within such groups or classifications by the secretary of state in the order received, for the purpose of placing them on the ballot. Measures submitted by the legislative assembly must be placed first on the ballot within their classification in the order approved by the legislative assembly. Constitutional measures shall be placed first on the ballot, initiated statutes second, and referred statutes third. After all the measures have been placed within the appropriate group or classification, all measures must be numbered consecutively, without regard to the various groups or classifications.

Approved March 25, 1997
Filed March 25, 1997

CHAPTER 188

SENATE BILL NO. 2044

(Legislative Council)

(Judiciary Committee)

(Senators Traynor, W. Stenehjem, LaFountain)

(Representatives Nottestad, Brown, Delmore)

INITIATIVE AND REFERENDUM SUBMISSION DEADLINE

AN ACT to amend and reenact subsection 7 of section 16.1-01-09 of the North Dakota Century Code, relating to the submission deadline for initiative and referendum petitions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ **SECTION 1. AMENDMENT.** Subsection 7 of section 16.1-01-09 of the North Dakota Century Code is amended and reenacted as follows:

7. ~~A~~ An initiative or referendum petition ~~must~~ may be submitted to the secretary of state ~~by five p.m. on~~ until midnight of the day designated as the deadline for submitting the petition.

Approved March 5, 1997

Filed March 6, 1997

¹ Section 16.1-01-09 was also amended by section 2 of House Bill No. 1065, chapter 52.

CHAPTER 189

SENATE BILL NO. 2368 (Senators G. Nelson, Mathern) (Representatives Dorso, Boucher)

POLITICAL PARTY ORGANIZATION

AN ACT to create and enact a new section to chapter 16.1-03 of the North Dakota Century Code, relating to political party organization; to amend and reenact sections 16.1-03-01, 16.1-03-02, 16.1-03-03, 16.1-03-07, 16.1-03-08, 16.1-03-11, 16.1-03-12, 16.1-03-14, 16.1-11-03, and 16.1-11-30 of the North Dakota Century Code, relating to political party organization; and to repeal sections 16.1-03-04, 16.1-03-06, 16.1-03-09, 16.1-03-10, 16.1-03-13, 16.1-03-16, and 16.1-03-18, relating to political party organization.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-03-01 of the North Dakota Century Code is amended and reenacted as follows:

16.1-03-01. Precinct caucus to elect precinct committeemen - Time and manner of holding - Caucus call - Notice.

1. On or before May fifteenth following the last preceding general election, a party caucus must be held by every election precinct at a site within or reasonably close to the precinct in the manner provided in sections 16.1-03-01 through ~~16.1-03-04~~ 16.1-03-03.
2. The legislative district chairman of each party shall issue the call for the precinct caucus at least twenty days before the time set for holding the caucus and the call must contain the following:
 - a. Name of party.
 - b. Precinct number or name.
 - c. Date of caucus.
 - d. Place of caucus.
 - e. Hours of caucus.
 - f. A statement of the business to be conducted, including the election of precinct committeemen and such other persons as may be provided by state law and party rules.
 - g. The name of the district chairman issuing the call.
3. The district chairman shall provide ten days published notice in the official newspaper in circulation within each precinct in the district. The notices must contain that information set forth in subsection 2. The district chairman may include the information required by this section for all precincts in the district in one notice for publishing purposes.

SECTION 2. AMENDMENT. Section 16.1-03-02 of the North Dakota Century Code is amended and reenacted as follows:

16.1-03-02. Who may participate in and vote at caucus.

1. Only those persons who are qualified electors pursuant to section 16.1-01-04 may vote or be elected as committeemen or officers at the precinct caucus.
2. Only those persons who either voted or affiliated with the party at the last general election or intend to vote or affiliate with the party at the next general election may vote at the precinct caucus.
3. In case the right of a person to participate at the caucus is challenged, the question of ~~his~~ the person's right to participate must be decided by a vote of the whole caucus. A person so challenged may not vote on the question of ~~his~~ the person's right to participate in the caucus, and a two-thirds vote of the whole caucus is required to exclude a person from participation.
4. No person may vote or participate at more than one precinct caucus in any one year.

SECTION 3. AMENDMENT. Section 16.1-03-03 of the North Dakota Century Code is amended and reenacted as follows:

16.1-03-03. Caucus business and elections - Political parties entitled to elect committeemen.

1. Each precinct caucus shall elect a chairman, committeemen as provided in subsection 3, and other officers as may be provided by party rules. The caucus may also discuss party policies, candidates, and any other business as prescribed by party rules.
2. No political organization; ~~political or otherwise~~, is entitled to elect a precinct committeeman at its precinct caucus unless:
 - a. The organization nominated and had printed on the ballot at the last preceding presidential election the names of a set of presidential electors pledged to the election of the party's candidates for president and vice president or a candidate for governor; and
 - b. The candidates provided for in subdivision a received at least five percent of the total vote cast for presidential electors or governor within this state at that election.
3. Each political party in each voting precinct of this state, otherwise qualifying under subsection 2, is entitled to elect one precinct committeeman for each two hundred fifty votes, or major fraction thereof, cast for the party's presidential electors in the precinct in the last presidential election. Each precinct is entitled to at least one precinct committeeman for each party which qualifies under subsection 2. Each precinct committeeman must be an elector of ~~his~~ the precinct in which the committeeman resides and must be elected for a two-year term.

4. All questions concerning the manner in which a caucus is conducted or called that are not covered by state law must be governed by Robert's Rules of Order (revised) unless otherwise governed by party rules. The caucus chairman shall notify the county auditor of those precinct committeemen elected.

SECTION 4. AMENDMENT. Section 16.1-03-07 of the North Dakota Century Code is amended and reenacted as follows:

16.1-03-07. Meeting of district committee - Organization. In every odd-numbered year, the district committee of each party shall meet within fifteen days after the precinct caucus provided for in section 16.1-03-01. The day, hour, and site must be set by the existing district committee chairman. The precinct committeemen of a party, selected as provided by this chapter, with any other persons provided for by the district committee's bylaws and as the district committee designates, constitute the district committee of the party. The district committee of a party must be organized to coincide with the geographical boundary lines of state legislative districts. Each member of any committee provided for in this chapter must be a qualified elector and must retain the office the member was elected to until a successor is chosen. The district committee shall organize by:

1. Selecting a chairman, vice chairman, ~~vice chairwoman~~, secretary, and treasurer chosen by the district committee. The officers selected need not be precinct committeemen; however, all the officers must be voting members of the district committee.
2. Adopting rules and modes of procedure not in conflict with law.
3. Filling any vacancies in the office of precinct committeeman pursuant to section 16.1-03-05.
4. Selecting an executive committee consisting of from five to eighteen persons chosen from the district committee. The chairman, vice chairman, ~~vice chairwoman~~, treasurer, and secretary of the district committee must be members and the officers of the executive committee. That party's nominees for and members of the legislative assembly ~~must~~ may also be members of the executive committee. The five to eighteen person membership limitation includes the officers of the executive committee and that party's nominees for and members of the legislative assembly.

The newly elected chairman shall notify the ~~county auditor~~ secretary of state of the names of the party officers selected. The secretary of state shall certify the names of the party officers to the county auditors. If the office of chairman becomes vacant, the vice chairman shall hold the office until the next regular election for the office or until a new chairman is selected by the district committee for the balance of the term, whichever ~~first~~ occurs first. The secretary of state must be notified of any changes in membership of the district's committee officers by the district committee and must notify the county auditors of any changes.

SECTION 5. AMENDMENT. Section 16.1-03-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-03-08. State committee - Membership. The state committee of each party consists of the chairman of each of the district committees of the party, ~~the~~

~~national committeeman and national committeewoman of the party, and any person provided for in the bylaws of the state committee.~~

SECTION 6. AMENDMENT. Section 16.1-03-11 of the North Dakota Century Code is amended and reenacted as follows:

16.1-03-11. State committee - Meetings - Organization - Vacancies. The state committee shall meet on or before July first of each odd-numbered year. The committee shall organize by selecting a chairman, vice chairman, ~~vice chairwoman,~~ if provided for in the rules of the party, secretary, and treasurer and by adopting rules and modes of procedure. The party's bylaws must be filed with the secretary of state. The officers elected need not be members of the committee, but they shall become voting members of the committee after their election. The newly elected chairman shall notify the secretary of state of the names of the party officers selected. ~~These officers, together with the national committeeman, national committeewoman, a representative of state elected officials who are members of that party, the party's majority or minority leaders in the house of representatives and senate and four district chairmen to be selected by the state committee~~ any other persons provided for by the party's bylaws and as the state committee designates, constitute the executive committee of the state committee. ~~If a vacancy occurs in the office of committee treasurer, the committee chairman may appoint a person to serve as acting treasurer. The vacancy must be permanently filled for the balance of the term by a majority vote of the state committee at the first committee meeting following the occurrence of the vacancy. If the office of chairman becomes vacant, the vice chairman holds the office until the next regular election for the office or until a new chairman is selected by the state committee for the balance of the term, whichever occurs first.~~ A vacancy in an office of the state committee, other than chairman and a party district chairman, must be filled upon a majority vote of the state committee. The chairman of the state committee may temporarily fill any vacancy existing on the state committee until the state committee convenes to fill the vacancy. The secretary of state must be notified of any changes in membership of the state's committee officers.

SECTION 7. AMENDMENT. Section 16.1-03-12 of the North Dakota Century Code is amended and reenacted as follows:

16.1-03-12. Meeting of district committee to elect delegates to state party convention - Optional precinct caucus - Proxies. ~~Prior to the second Monday in June sixtieth day before the primary election in each presidential election year and upon the call of the chairman, the district committee of each state senatorial legislative district shall meet at a place designated by the chairman to elect delegates to a state party convention to be held as provided in this chapter. If the bylaws of the state senatorial legislative district so provide, precinct committeemen may call a precinct caucus prior to the district meeting to elect additional delegates to attend the district meeting. Unless the rules of the state party provide otherwise, one delegate to the state convention must be elected for each three hundred votes, or major fraction thereof, cast in the district at the last preceding presidential election for the candidates for presidential electors of the party, but every district is entitled to at least one delegate. Delegates to the state convention must be elected as provided by the state party's bylaws. Delegates to the state convention must be electors of their district. If any delegate is unable to attend the convention, that delegate shall designate in writing an alternate from the list of alternates selected at the district convention to attend and represent and act for that delegate.~~

SECTION 8. AMENDMENT. Section 16.1-03-14 of the North Dakota Century Code is amended and reenacted as follows:

16.1-03-14. Duties When state party convention held and duties of state party convention. The state party conventions must be held in each presidential election year at a place and time designated by the party state committee. The state party convention provided for in this chapter shall:

1. Nominate the legal number of candidates for its party for the offices of presidential electors.
2. ~~Elect a national committeeman and a national committeewoman.~~
3. ~~Elect the required number of delegates and alternates to the national party convention and a like number of alternates as provided by the party's bylaws or national party rules.~~
4. 3. Conduct other business as shall come before the convention.

The candidate or candidates for ~~nomination~~ endorsement or election must be declared ~~nominated~~ endorsed or elected pursuant to the rules of the party involved, and the chairman and secretary of the convention shall issue certificates of ~~nomination or election~~ endorsement as provided in section 16.1-11-06 or certificates of election. ~~If any delegate to the national convention is unable to attend that convention, he shall designate, in writing, one of the alternates to attend and represent and act for him.~~ The names of the candidates nominated for presidential electors with the surname of the presidential candidate the party wishes to place on the general election ballot must be certified by the chairman and secretary of the convention to the secretary of state by four p.m. on the sixtieth day before the general election to be placed upon the general election ballot as provided ~~by law~~ in section 16.1-06-07.1.

SECTION 9. A new section to chapter 16.1-03 of the North Dakota Century Code is created and enacted as follows:

Organizations allowed to nominate statewide and legislative candidates. A political organization may not endorse candidates or have candidates petition for president, vice president, congress, statewide office, or legislative office as set forth in chapter 16.1-11, unless the organization, political or otherwise:

1. Had printed on the ballot at the last preceding presidential election the names of a set of presidential electors pledged to the election of the party's candidate for president and vice president or a candidate for governor and those candidates for presidential electors or governor received at least five percent of the total vote cast for presidential electors or the office of governor within this state at that election;
2. Organized according to all requirements of this chapter; or
3. Filed a petition with the secretary of state as set forth in section 16.1-11-30.

SECTION 10. AMENDMENT. Section 16.1-11-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-11-03. Political parties authorized to conduct presidential preference contest. Every political party entitled to a separate column under section 16.1-11-30 is entitled to conduct a presidential preference contest. A political party subject to ~~subsection 4 of~~ section 16.1-11-30 shall meet the requirements of ~~subsection 4 of~~

section 16.1-11-30 by filing the petition with the secretary of state before four p.m. of the sixtieth day before the presidential preference contest.

² **SECTION 11. AMENDMENT.** Section 16.1-11-30 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-30. Separate column on primary election ballot required for each political party. ~~The following political parties must be provided with separate columns on primary election ballots:~~

- ~~1. The republican party.~~
- ~~2. The democrat party.~~
- ~~3. Any party which cast five percent of the total votes cast for governor at the last general election that had printed on the ballot at the last preceding presidential election the names of a set of presidential electors pledged to the election of the party's candidates for president and vice president or a candidate for governor and those candidates for presidential electors or governor received at least five percent of the total vote cast for presidential electors or the office of governor within this state at that election or has organized according to all the requirements of chapter 16.1-03 must be provided with a separate column on primary election ballots.~~
4. Any other party political organization is entitled to endorse candidates or have candidates petition to be included on the primary ballot in a consolidated column, if a petition signed by at least seven thousand qualified electors of this state is filed with the secretary of state before four p.m. of the sixtieth day prior to a primary election, asking that a column be provided for such party, naming it the political organization, and stating the platform principles thereof, and requesting the names of its candidates to be included on the state's primary ballot in a consolidated column. If such petition is mailed it must be in the possession of the secretary of state before four p.m. on the sixtieth day prior to a primary election. Candidates of such party are entitled to the same rights and privileges as those of other parties.

A political organization that had printed on the ballot at the last preceding presidential election the names of a set of presidential electors pledged to the election of the party's candidates for president and vice president or a candidate for governor and those candidates for presidential electors or governor received at least five percent of the total vote cast for presidential electors or the office of governor within this state at that election are entitled to organize according to the requirements of chapter 16.1-03.

Columns must be arranged so that any column is in an inverted position when the adjacent column or columns are in an upright position. Within the consolidated column, the group of candidates for each organization must be inverted from the next group appearing in that column.

² Section 16.1-11-30 was also amended by section 3 of Senate Bill No. 2290, chapter 198.

SECTION 12. REPEAL. Sections 16.1-03-04, 16.1-03-06, 16.1-03-09, 16.1-03-10, 16.1-03-13, 16.1-03-16, and 16.1-03-18 of the North Dakota Century Code are repealed.

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 190

SENATE BILL NO. 2190

(Senators St. Aubyn, Robinson, B. Stenehjem)
(Representatives Fairfield, R. Kelsch, Nottestad)

ELECTION OFFICIAL APPOINTMENT

AN ACT to amend and reenact subsection 2 of section 16.1-05-01 and subsection 1 of section 16.1-05-02 of the North Dakota Century Code, relating to the appointment of election judges and clerks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 16.1-05-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The election judges and poll clerks for each precinct must be appointed by the district ~~chairmen~~ chairs representing the two parties that cast the largest number of votes in the state at the last general election. Each election judge and poll clerk must be given a certificate of appointment signed by the ~~chairman~~ chair of the district committee of the judge's party. In voting precincts or districts in which over one thousand votes are cast in any election, the county auditor may request each district party ~~chairman~~ chair to appoint an additional election judge. In voting precincts or districts in which over three hundred votes are cast in any election the district party ~~chairmen~~ chair may each appoint additional poll clerks as determined by the county auditor. The district party ~~chairman~~ chair shall notify the county auditor of the counties in which the precincts are located of the appointment of the election judges and poll clerks at least twenty-one days before the primary, general, or special election. If this notice is not received within the time specified in this section, the county auditor shall appoint the judges and poll clerks. If the county auditor has exhausted all practicable means to select judges and clerks from within the voting precinct and vacancies still remain, the county auditor may select election judges and clerks who reside outside of the voting precinct but who reside within the precinct's legislative district. If vacancies still remain, the county auditor may select election judges and clerks who reside outside of the legislative district but who reside within the county. If at any time before or during an election, it shall be made to appear to an election inspector, by the affidavit of two or more qualified electors of the precinct, that any election judge or poll clerk is disqualified under this chapter, the inspector shall remove that judge or clerk at once and shall fill the vacancy by appointing a qualified person of the same political party as that of the judge or clerk removed. If the disqualified judge or clerk had taken the oath of office as prescribed in this chapter, the inspector shall place the oath or affidavit before the state's attorney of the county.

SECTION 2. AMENDMENT. Subsection 1 of section 16.1-05-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Every member of the election board and each poll clerk must be a qualified elector of the precinct in which the person is assigned to work and must be eligible to vote at the polling place to which the person is assigned unless the county auditor has exhausted all means to appoint election judges and clerks from within the voting precinct under subsection 2 of section 16.1-05-01.

Approved March 6, 1997

Filed March 6, 1997

CHAPTER 191

SENATE BILL NO. 2175

(Senators Grindberg, Robinson)
(Representatives Carlson, Fairfield, Grande)

ELECTION BALLOTS, CANVASSING, NOMINATIONS, AND FILING

AN ACT to amend and reenact sections 16.1-06-06, 16.1-07-09, 16.1-09-02, 16.1-11-13, 16.1-11-19, 16.1-15-17, 16.1-15-22, and 44-08-21 of the North Dakota Century Code, relating to general election ballots for persons authorized to vote for presidential electors only, canvassing late absentee ballots, presidential candidates personal disclosure statements, filing of certificates with the secretary of state showing the names and addresses of persons nominated in the county by county auditors, filling vacancies existing on the no-party ballot, time when county canvassing boards are required to meet, recall elections, and deadlines for candidates to file in recall elections.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-06-06 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-06. General election ballots for persons authorized to vote for ~~federal offices~~ presidential electors only - Prepared separately - General law governs. In addition to the ballots prepared pursuant to section 16.1-06-05, ballots must be prepared containing only the names of duly certified candidates for presidential electors for use by persons authorized to vote for those offices by law. The provisions of this title regarding the preparation, form, arrangement of names, delivering, and stamping of ballots must govern in regard to the general election ballot prepared pursuant to this section. The ballots prepared pursuant to this section must be delivered to electors who qualify only to vote for presidential electors pursuant to sections ~~16.1-01-04~~, 16.1-14-18, and 16.1-14-19.

SECTION 2. AMENDMENT. Section 16.1-07-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-07-09. Canvassing of mailed absent voters' ballots received late. In the case of congressional, state, county, city, or school district elections, if an envelope postmarked by the United States postal service or other mail delivery system before the date of election and containing an absent voter's ballot is received by the officer too late to be forwarded to the proper voting precinct in time to be tabulated, the ballot must be tallied by the canvassing board of the county, the governing body of the city, or the school board of the school district, as the case may be, at the time the returns are canvassed. Any envelope without a postmark by the United States postal service or other mail delivery system or with an illegible postmark and containing an absentee voter's ballot must be received by mail by the proper officer within ~~forty-eight hours after the closing of the polls on election day~~ two days after the election to be canvassed and counted. An absent voter may personally deliver the absent voter's ballot to the appropriate officer's office at any time before five p.m. on the day before the election. Before forwarding any ballot to a canvassing board pursuant to this section, the officer forwarding the ballot shall print the date ~~and~~

~~hour~~ of receipt on the envelope. Upon receipt, the canvassing board shall first determine that the elector was qualified to vote in that precinct and that the elector did not previously vote in that precinct on the date of the election before allowing the ballot to be tallied.

SECTION 3. AMENDMENT. Section 16.1-09-02 of the North Dakota Century Code is amended and reenacted as follows:

16.1-09-02. Statement of interests to be filed. Every candidate for elective office shall file a statement of interests as required by this chapter. In a year when a president and vice president of the United States are to be chosen, presidential and vice presidential candidates shall file with the secretary of state either a statement of interests as required by this chapter or a copy of the personal disclosure statement that is required by the federal election commission. A candidate for elective office shall file the statement of interests with the officer with whom the candidate filed the candidate's certificate of nomination, certificate of endorsement, or petition of nomination. Candidates for elective office who are required to file such statements shall do so at the time of filing a certificate of nomination, a certificate of endorsement, or a petition of nomination, pursuant to chapter 16.1-11, 16.1-12, or 40-21, as is appropriate; provided, that any person who has filed a statement as the result of candidacy in a primary election need not refile prior to running in the following general election. Every person who is appointed by the governor to a state agency, board, bureau, commission, department, or occupational or professional licensing board shall file a statement of interests as required by this chapter with the secretary of state simultaneously with announcement of the appointment.

SECTION 4. AMENDMENT. Section 16.1-11-13 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-13. Filing petition or certificate of endorsement when legislative district composed of more than one county - Certificate of county auditor. When a legislative district is composed of more than one county, the certificate of endorsement or the petition provided for in section 16.1-11-11 must be filed with the county auditor of the county where the candidate resides, and that county auditor shall certify to the county auditors of the other counties comprising the legislative district the names and addresses of the candidates filing the petitions or certificates. At the same time, the county auditor shall certify to the secretary of state the names and addresses of all legislative candidates nominated in the county under this chapter.

SECTION 5. AMENDMENT. Section 16.1-11-19 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-19. Filling vacancy existing on no-party ballot - Petition required - Time of filing. If a vacancy exists on a no-party ballot for a state office or for judge of a district court, the vacancy may be filled by filing with the secretary of state, before four p.m. on the fifty-sixth day prior to the primary election, a written petition as provided in section 16.1-11-06, stating that the petitioner desires to become a candidate for nomination to the office for which a vacancy exists. If the petition is mailed, it must be in the possession of the secretary of state before four p.m. on the fifty-sixth day prior to the primary election. The petition for the nomination of any person to fill the vacancy must be signed by qualified electors equal in number to at least two percent of the total vote cast for governor at the most recent general election in the state or district at which the office of governor was voted upon, but in no case may more than three hundred signatures be required.

If a vacancy exists on a no-party ballot in a county or district within a county, the vacancy may be filled by filing with the county auditor, before four p.m. of the fifty-sixth day prior to the primary election, a written petition as provided in section 16.1-11-11, stating that the petitioner desires to become a candidate for nomination to the office for which a vacancy exists. If the petition is mailed, it must be in the possession of the county auditor before four p.m. on the fifty-sixth day prior to the primary election. The petition for the nomination of any person to fill the vacancy must be signed by qualified electors ~~equal in number to at least thirty percent of the total vote cast for governor at the most recent general election in the county or district at which the office of governor was voted upon, but in no case may more than three hundred signatures be required~~ as provided in subdivision c of subsection 2 of section 16.1-11-11. A vacancy in the no-party ballot must be deemed to exist when a candidate who was qualified by filing a petition pursuant to section 16.1-11-06 or 16.1-11-11 dies, resigns, or otherwise becomes disqualified to have his name printed on the ballot.

SECTION 6. AMENDMENT. Section 16.1-15-17 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-17. Time of county canvassing board meeting - Oath required - Reconsideration of canvass. ~~As soon as the returns are received by the county auditor~~ Not earlier than the third day following each election, but not later than six days after each election, the county canvassing board shall meet and, after taking the oath of office, shall proceed to open and publicly canvass the returns. After the initial meeting of the board as provided in this section, any two or more members may call a meeting of the board and upon approval of a majority of the members, the board shall recanvass the results of the election or any portion thereof and may correct any previous canvass or certification or both in regard to the election. Any correction of any previous certification of election results as provided in this section must be immediately dispatched to the secretary of state who shall call a meeting of the state canvassing board as provided in section 16.1-15-35 for the purpose of recanvassing and, if necessary, correcting any previous certification of the election results.

SECTION 7. AMENDMENT. Section 16.1-15-22 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-22. County auditor to transmit abstract of votes to secretary of state after primary election. The county auditor of each county, under ~~his~~ the auditor's official seal, shall return to the secretary of state by registered or certified mail within ten days after the day of any primary election, a certified abstract, under separate political designation or principle, or no-party designation, as the case may be, of the total number of votes cast in ~~his~~ the auditor's county and the votes cast for every candidate for nomination for United States senator, United States representative, state officers, judges of the supreme court, judges of the district court, and members of the legislative assembly. ~~The county auditor also shall file with the secretary of state a certificate showing the names and addresses of the persons nominated under the several political designations and principles in his county.~~ The certified abstract ~~and the certificate of nomination~~ to be mailed under the provisions of this section must be in the possession of the secretary of state before four p.m. on the tenth day after the primary election.

SECTION 8. AMENDMENT. Section 44-08-21 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

44-08-21. Recall of elected officials of political subdivisions. An elected official of a political subdivision, except an official subject to recall pursuant to section 10 of article III of the Constitution of North Dakota, is subject to recall by petition of electors equal in number to twenty-five percent of the voters who voted in the most recent election that the office of the official sought to be recalled was on the ballot, not including other recall elections, except in any political subdivision with a population of not more than one hundred, the petition must be signed by at least six electors. The provisions of section 16.1-01-09, as they relate to signing and circulating recall petitions, apply to petitions under this section.

The petition may include the stated reason for the recall and must be filed with the official with whom a petition for nomination to the office in question is filed unless that official is the person subject to recall, in which case the petition must be filed with the secretary of state. The official with whom the petition is filed shall pass on the sufficiency of a petition under this section in the manner required of the secretary of state under section 16.1-01-10. Except as otherwise provided in this section, the official shall call a special election to be held within ~~forty~~ sixty days if the official finds the petition valid and sufficient. No special election may be called if the date would be within ninety days of the next scheduled election. An elector's name may not be removed from a recall petition.

The name of the official to be recalled must be placed on the ballot unless the official resigns within ten days after the filing of the petition. Other candidates for the office may be nominated in a manner provided by law and shall file nominating papers with the appropriate official by the thirty-third day before the scheduled recall election. If the official resigns, the appropriate political subdivision governing body may call a special election or appoint a person to complete the unexpired term of the office. When the election results have been officially declared, the candidate receiving the highest number of votes is elected for the remainder of the term. No official is subject to recall twice during the term for which the official was elected.

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 192

SENATE BILL NO. 2151

(Senators W. Stenehjem, Andrist, Klein)
(Representatives DeKrey, Delmore, Kretschmar)

ABSENTEE VOTING AND BALLOTS

AN ACT to amend and reenact sections 16.1-07-01, 16.1-07-05, 16.1-07-06, and 16.1-07-08 of the North Dakota Century Code, relating to an elector's eligibility to vote by absentee ballot; and to repeal section 16.1-07-02 of the North Dakota Century Code, relating to voting by absentee ballot.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-07-01 of the North Dakota Century Code is amended and reenacted as follows:

16.1-07-01. Absent voter - Who may vote.

1. Any qualified elector of this state, including an individual who, at any general, special, or primary state election, at any county election, or at any city or school district election, is absent from the city, township, or consolidated voting precinct in which he is an elector, is in the armed forces of the United States, is in the merchant marine of the United States, ~~is physically disabled,~~ or is a United States citizen living outside the United States who resided in this state immediately prior to ~~his~~ the individual's departure from the United States, may vote an absent voter's ballot at ~~that~~ any general, special, or primary state election, any county election, or any city or school district election.
2. A qualified elector who is a citizen of the United States and lives outside the United States may vote absentee in this state pursuant to this chapter if ~~he~~ the individual:
 - a. Does not maintain a domicile;
 - b. Is not registered to vote;
 - c. Is not voting in any other state, territory, or possession of the United States; and
 - d. Possesses a valid passport or card of identity and registration issued under the authority of the secretary of state of the United States.

Such an elector may vote only in federal elections, which means any election held solely or in part for the purpose of electing or nominating any candidate for the office of president, vice president, presidential elector, member of the United States senate, or member of the United States house of representatives.

3. An elector who votes by absentee ballot may not vote in person at the same election.

³ **SECTION 2. AMENDMENT.** Section 16.1-07-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-07-05. Time for applying for ballot. At any time in an election year, any qualified elector ~~expecting to be absent on election day as provided in section 16.1-07-04~~ may apply to the county auditor, the auditor or clerk of the city, or the business manager of the school district, as the case may be, by facsimile or otherwise, for an official ballot to be voted at that election. A voter may obtain an application form for an absent voter's ballot for a general, special, primary, or county election from either the county auditor or a city auditor. The application form, for a member of the United States armed forces or the United States merchant marine or for a qualified elector living outside the United States, must include a space for the applicant to indicate whether the application is for all statewide elections in the calendar year or only for the election that is immediately after the date of the application. An applicant who is a member of the United States armed forces or the United States merchant marine or is a qualified elector living outside the United States, may apply for and vote by facsimile if otherwise qualified to apply for and vote by absentee ballot. An auditor, clerk, or business manager may send and receive facsimile absentee ballot applications and facsimile absentee ballots to ~~those electors~~ any individual eligible to apply for and vote by facsimile under this section. No auditor or clerk may issue ballots for absentee voters on the day of the election.

SECTION 3. AMENDMENT. Section 16.1-07-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-07-06. Application form.

1. Application for an absent voter's ballot must be made on a blank furnished by the proper officer of the county, city, or school district in which the applicant is an elector, or on any blank containing the following information:
 - a. The applicant's name.
 - b. The applicant's voting address.
 - c. The applicant's mailing address.
 - d. The applicant's current home telephone number.
 - e. The election for which the ballot is being requested.
 - f. ~~The applicant's reason for voting absentee as specified in section 16.1-07-04.~~
 - ~~g.~~ The date of the request.
 - ~~h.~~ g. An affirmation that the applicant has resided in the precinct for at least thirty days.

³ Section 16.1-07-05 was also amended by section 1 of Senate Bill No. 2302, chapter 193.

- h. h. The applicant's signature.
2. A qualified elector absent from the state is not required to file an application for an absent voter's ballot for any statewide election if either of the following apply:
- a. The elector is a member, or spouse or dependent of a member, of the United States armed forces or merchant marine.
 - b. The elector is a United States citizen living outside the United States.

If the qualified elector furnishes the county auditor with a current mailing address and the elector's local residence or precinct, the county auditor shall mail to the qualified elector a ballot with a return envelope and instructions for voting for any statewide election in that calendar year.

SECTION 4. AMENDMENT. Section 16.1-07-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-07-08. Delivering ballots - Envelope accompanying - Statement on envelope - Inability of elector to sign name.

1. Upon receipt of an application for an official ballot properly filled out and duly signed, or as soon thereafter as the official ballot for the precinct in which the applicant resides has been prepared, the county auditor, city auditor, or business manager of the school district, as the case may be, shall send to the absent voter by mail, at the expense of the political subdivision conducting the election, one official ballot, or personally deliver the ballot to the applicant or the applicant's agent, which agent may not, at that time, be a candidate for any office to be voted upon by the absent voter. The agent shall sign the agent's name before receiving the ballot and deposit with the auditor or business manager of the school district, as the case may be, authorization in writing from the applicant to receive the ballot or according to requirements set forth for signature by mark. No person may receive compensation, including money, goods, or services, for acting as an agent for an elector, nor may a person act as an agent for more than four electors in any one election. A voter voting by absentee ballot may not require the political subdivision providing the ballot to bear the expense of the return postage for an absentee ballot.
2. If there is more than one ballot to be voted by an elector of the precinct, one of each kind must be included and an envelope must be enclosed with the ballot or ballots. The front of the envelope must bear the official title and post-office address of the officer supplying the voter with the ballot, and upon the other side a printed statement in substantially the following form:

State of _____>

} ss.

County of _____>

+, _____, under penalty of possible criminal prosecution for making a false statement, do solemnly swear that I am a resident of the township of _____, or of the _____ precinct of the _____ ward in the city of _____, residing at _____ in said county, county of _____ and state of North Dakota, and entitled to vote in such precinct at the next election; that I expect to be absent from the precinct of my residence on the day of the election or that by reason of physical disability I am unable to attend at the polling place for the election, and that I will have no opportunity to vote in person on that day.

Precinct _____

Name _____

Residential Address _____

City _____ ND Zip Code _____

Under penalty of possible criminal prosecution for making a false statement, I swear that the above residential address is my address for voting purposes, that I have resided in my precinct for at least thirty days, and this is the only ballot I will cast in this election.

Applicant's Signature _____

Date _____

If the absent voter is unable to sign the voter's name, the voter shall mark (X) that statement in the presence of a disinterested person. The disinterested person shall print the name of the person marking the X below the X, and shall sign that person's own name following the printed name with the notation "witness to the mark".

SECTION 5. REPEAL. Section 16.1-07-02 of the North Dakota Century Code is repealed.

Approved March 21, 1997
 Filed March 21, 1997

CHAPTER 193

SENATE BILL NO. 2302

(Senators Tallackson, Krauter)
(Representative Huether)

ABSENTEE BALLOT APPLICATIONS

AN ACT to amend and reenact section 16.1-07-05 of the North Dakota Century Code, relating to applying for an absentee ballot.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁴ **SECTION 1. AMENDMENT.** Section 16.1-07-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-07-05. Time for applying for ballot. At any time in an election year, any qualified elector ~~expecting to be absent on election day as provided in section 16.1-07-04~~ may apply to the county auditor, the auditor or clerk of the city, or the business manager of the school district, as the case may be, by facsimile or otherwise, for an official ballot to be voted at that election. A voter may obtain an application form for an absent voter's ballot for a general, special, primary, or county election from either the county auditor or a city auditor. The application form, for a member of the United States armed forces or the United States merchant marine or for a qualified elector living outside the United States, must include a space for the applicant to indicate whether the application is for all statewide elections in the calendar year or only for the election that is immediately after the date of the application. An applicant who is a member of the United States armed forces or the United States merchant marine or is a qualified elector living outside the United States, may apply for and vote by facsimile if otherwise qualified to apply for and vote by absentee ballot. An auditor, clerk, or business manager may send and receive facsimile absentee ballot applications and facsimile absentee ballots to ~~those electors~~ any individual eligible to apply for and vote by facsimile under this section. No auditor or clerk may issue ballots for absentee voters on the day of the election except to persons prevented from voting in person on the day of the election due to an emergency. A person requesting an absentee ballot on the day of the election due to an emergency must do so through an agent as set forth in this chapter. An agent may represent only one person. The absentee ballot must be returned to the county auditor's office by four p.m. on the day of the election.

Approved March 25, 1997
Filed March 26, 1997

⁴ Section 16.1-07-05 was also amended by section 2 of Senate Bill No. 2151, chapter 192.

CHAPTER 194

HOUSE BILL NO. 1403

(Representatives R. Kelsch, Wardner)
(Senators St. Aubyn, W. Stenehjem)

CAMPAIGN CONTRIBUTIONS AND COMMITTEE REGISTRATION

AN ACT to amend and reenact subsection 10 of section 16.1-08.1-01, sections 16.1-08.1-02, 16.1-08.1-03, 16.1-08.1-03.1, 16.1-08.1-03.2, subsection 3 of section 16.1-08.1-03.3, sections 16.1-08.1-03.5, 16.1-08.1-06, and subdivision a of subsection 2 of section 16.1-10-02 of the North Dakota Century Code, relating to campaign contribution statements, political committee registration, and the definition of political purpose.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 10 of section 16.1-08.1-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10. "Political purpose" means any activity undertaken in support of or in opposition to the election or nomination of a candidate to public office whether the activity is undertaken by a candidate, a political committee, a political party, or any person. The term does not include activities undertaken in the performance of a duty of a state office.

⁵ **SECTION 2. AMENDMENT.** Section 16.1-08.1-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-02. Contributions statement required of candidates. Any candidate who is soliciting or accepting contributions for any political purpose, shall make and file a statement in accordance with this section.

The candidate shall include in the statement the name and mailing address of all contributors who contributed in excess of one hundred dollars in the aggregate during the reporting period to the candidate, the amount of each reportable contribution, and the date each reportable contribution was received.

The candidate shall file the statement no later than the twelfth day before the date of the election in which the candidate's name appears on the ballot or in which the candidate seeks election through write-in votes complete from the beginning of that calendar year ~~or, if applicable, from the cutoff date for the previous statement,~~ through the twentieth day before the date of the election. The candidate shall file a complete statement for the entire calendar year no later than the thirty-first day of January of the following year, regardless of whether the candidate's name appeared

⁵ Section 16.1-08.1-03.1 was also amended by section 1 of Senate Bill No. 2184, chapter 195.

on the ballot for any office during that calendar year or whether the candidate did not seek election at any election through write-in votes.

Statements of a legislative candidate must be filed in the office of the county auditor of the candidate's county of residence. Statements of state office candidates must be filed in the office of the secretary of state.

~~No candidate may be required to file any statement required by this chapter. Even if the candidate has not received any contributions in excess of one hundred dollars during the calendar year, the candidate shall file a statement as required by this chapter.~~

SECTION 3. AMENDMENT. Section 16.1-08.1-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03. Contributions statement required of political parties. Any political party that receives contributions in excess of one hundred dollars ~~and contributes money to a candidate in excess of one hundred dollars in the aggregate during the reporting period~~ shall file a statement containing a detailed list of all contributions received from ~~an individual~~ a person or political committee which exceed one hundred dollars in amount. The statement must include the name and mailing address of all contributors listed, the amount of each reportable contribution, and the date each reportable contribution was received.

A yearend statement covering the entire calendar year must be filed with the secretary of state no later than the thirty-first day of January of the following year. A preelection statement must be filed no later than the twelfth day before any election at which the party has endorsed or will nominate a candidate and must be complete from the beginning of that calendar year ~~or, if applicable, from the cutoff date for the previous statement,~~ through the twentieth day before the election.

SECTION 4. AMENDMENT. Section 16.1-08.1-03.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.1. Contributions statement required of persons promoting passage or defeat of initiated or referred measure.

1. Any person who is soliciting or accepting a contribution for the purpose of aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure at any election shall file a statement in accordance with this section if the person has received any contributions from a person in excess of one hundred dollars. The statement must include the name and mailing address of all contributors who contributed in excess of one hundred dollars to the person, the amount of each reportable contribution, and the date each reportable contribution was received.
2. A person soliciting or accepting a contribution for the purpose of aiding the circulation of a statewide initiative or referendum petition or of promoting passage or defeat of any statewide initiated or referred measure may not accept a contribution of more than one hundred dollars from ~~an individual~~ a person who does not reside in this state or from an out-of-state political committee unless the contribution is accompanied by a certified statement from the contributor listing the name, address, and amount contributed by each person who contributed

more than one hundred dollars of the contribution. The statement must indicate if no individual person contributed in excess of one hundred dollars of the out-of-state person's or political committee's overall contribution. The certified statement must also list the occupation, employer, and principal place of business for each person who contributed more than two hundred dollars of the contribution. The person soliciting or accepting a contribution for the purpose of aiding the circulation of a statewide initiative or referendum petition or of promoting passage or defeat of a statewide initiated or referred measure must include this statement with the contribution statement required to be filed under subsection 1.

3. The statement required of a person under subsection 1 must be filed with the secretary of state no later than the twelfth day prior to the date of the election in which the measure appears or would have appeared on the ballot complete from the beginning of that calendar year through the twentieth day prior to the date of the election. A complete statement for the entire calendar year must be filed no later than the thirty-first day of January of the following year.

SECTION 5. AMENDMENT. Section 16.1-08.1-03.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.2. Political committee registration. A political committee, other than a political party and a committee organized in support of a legislative candidate, and a person aiding or opposing a measure to be voted upon by the voters of the state shall register its name, address, and its agent's name and address with the secretary of state each calendar year in which it receives any contribution. The registration must be completed within five days of the receipt of any contribution and must be submitted with a registration fee of five dollars.

SECTION 6. AMENDMENT. Subsection 3 of section 16.1-08.1-03.3 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. All political committees formed for the purpose of administering the segregated fund provided for in this section shall file a statement showing the name and mailing address of each contributor of an amount in excess of two hundred dollars in the aggregate for the reporting period and a listing of all expenditures of an amount in excess of one hundred dollars in the aggregate made for political purposes with the secretary of state. The statement must include the amount of each reportable contribution and the date it was received and the amount of each reportable expenditure and the date it was made. A yearend statement covering the entire calendar year must be filed no later than the thirty-first day of the following year. A preelection statement must be filed no later than the twelfth day before any primary, special, or general election and must be complete from the beginning of the calendar year ~~or, if applicable, from the cutoff date for the previous statement~~ through the twentieth day before the election.

SECTION 7. AMENDMENT. Section 16.1-08.1-03.5 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.5. Expenditures for other purposes - Report required. ~~Nothing in this~~ This chapter ~~may be construed to~~ does not prohibit the exercise by corporations, cooperative corporations, limited liability companies, and associations of the right to make expenditures and contributions for the purpose of promoting passage or defeat of initiated or referred measures, or for promoting any general political philosophy or belief deemed in the best interest of the employees, stockholders, patrons, or members of the corporation, cooperative corporation, limited liability company, or association other than a "political purpose" as defined by this chapter. Any corporation, cooperative corporation, limited liability company, or association that receives contributions pursuant to section 16.1-08.1-03.1 or spends money for the purpose of promoting passage or defeat of initiated or referred measures, other than a contribution to another person promoting passage or defeat of an initiated or referred measure, shall file a statement pursuant to section 16.1-08.1-03.1 along with a statement listing the total amount of money spent for that purpose. ~~The statement~~ statements must be filed with the secretary of state no later than the twelfth day ~~prior to~~ before the date of the election in which the measure appears or would have appeared on the ballot complete from the beginning of that calendar year through the twentieth day ~~prior to~~ before the date of the election.

SECTION 8. AMENDMENT. Section 16.1-08.1-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-06. Contributions statement requirements. A statement required by this chapter to be filed with the secretary of state or county auditor must be:

- ~~1. Verified by the oath or affirmation of the person filing the statement, taken before any officer authorized to administer oaths.~~
- ~~2.~~ 2. Deemed properly filed when deposited in an established post office within the prescribed time, postage affixed, and directed to the secretary of state or county auditor, but ~~in the event~~ if it is not received, a duplicate of the statement must be promptly filed upon notice by the secretary of state or county auditor of its nonreceipt.
- ~~3.~~ 2. Preserved by the secretary of state or county auditor for a period of four years from the date of filing. The statement is to be considered a part of the public records of the secretary of state's or county auditor's office and must be open to public inspection.

If the filing date falls on a Saturday or Sunday or a holiday on which the office of the secretary of state or county auditor is closed, the statement must be filed on the next available day on which the office of the secretary of state or county auditor is open. In determining the amount of individual contributions from any contributor, all amounts received from the same contributor during the reporting period must be aggregated for the purposes of the statements required by this chapter.

SECTION 9. AMENDMENT. Subdivision a of subsection 2 of section 16.1-10-02 of the North Dakota Century Code is amended and reenacted as follows:

- a. "Political purpose" means any activity ~~directly undertaken by a candidate for any office in support of his own election to such office; or aid and assistance to any candidate, political party, political committee, or organization~~ in support of or in opposition to the election or nomination of a candidate to public office whether the activity is undertaken by a candidate, political committee, political party, or any other person, but does not include activities undertaken in the performance of a duty of state office.

Approved April 3, 1997
Filed April 3, 1997

CHAPTER 195

SENATE BILL NO. 2184

(Senators W. Stenehjem, Holmberg)
(Representatives Kretschmar, Stenehjem)

INITIATED AND REFERRED MEASURE CONTRIBUTION STATEMENTS

AN ACT to amend and reenact subsection 2 of section 16.1-08.1-03.1 of the North Dakota Century Code, relating to campaign contribution statements required of persons promoting passage or defeat of initiated or referred measures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁶ **SECTION 1. AMENDMENT.** Subsection 2 of section 16.1-08.1-03.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A person soliciting or accepting a contribution for the purpose of aiding the circulation of a statewide initiative or referendum petition or of promoting passage or defeat of any statewide initiated or referred measure may not accept a contribution of more than one hundred dollars from ~~an individual~~ a person who does not reside in this state or from an out-of-state political committee unless the contribution is accompanied by a certified statement from the contributor listing the name, address, and amount contributed by each person who contributed more than one hundred dollars of the contribution. If no person contributed in excess of one hundred dollars from the out-of-state person's or political committee's overall contribution, the statement must indicate that fact. The certified statement must also list the occupation, employer, and principal place of business for each person who contributed more than ~~two~~ one hundred dollars of the contribution. The person soliciting or accepting a contribution for the purpose of aiding the circulation of a statewide initiative or referendum petition or of promoting passage or defeat of a statewide initiated or referred measure must include this statement with the contribution statement required to be filed under subsection 1.

Approved March 21, 1997
Filed March 21, 1997

⁶ Section 16.1-08.1-03.1 was also amended by section 2 of House Bill No. 1403, chapter 194.

CHAPTER 196

SENATE BILL NO. 2225

(Senators Holmberg, W. Stenehjem, Traynor)

CAMPAIGN CONTRIBUTIONS

AN ACT to create and enact a new section to chapter 16.1-08.1 of the North Dakota Century Code, relating to the acceptance of campaign contributions by a candidate from federal campaign committee accounts or from contributions made to other candidates or former candidates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 16.1-08.1 of the North Dakota Century Code is created and enacted as follows:

Contributions from federal campaign committee accounts or from contributions made to other candidates or former candidates limited. A candidate may not accept a contribution in an amount exceeding two hundred dollars from another candidate's campaign contributions, from contributions made to a person who was a candidate within the previous six years, or from a federal campaign committee account unless:

1. The person who makes a contribution from such funds includes with the contribution a statement that the original contributors gave permission to contribute money to another candidate; and
2. The receiving candidate files a disclosure statement with the same office as required under section 16.1-08.1-02 for campaign contribution statements within forty-eight hours after receiving the contribution. The statement must include a copy of the permission statement required of the donating person under subsection 1.

Approved March 25, 1997

Filed March 26, 1997

CHAPTER 197

SENATE BILL NO. 2158

(Senators Watne, Schobinger)

ELECTION CANDIDATE VACANCY FILLING

AN ACT to amend and reenact sections 16.1-11-18 and 16.1-12-08 of the North Dakota Century Code, relating to filling election candidate vacancies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-11-18 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-18. Party committees to fill vacancy occurring in nomination for party office.

1. If a vacancy occurs in any party certificate of endorsement at the primary election for any state or legislative district office, the proper state or district executive committee of the political party may fill the vacancy by filing another certificate of endorsement with the proper officer as provided in sections 16.1-11-06 and 16.1-11-11.
2. If no party endorsement has been made by certificate and a vacancy occurs in a slate of candidates seeking party nomination by petition at the primary election, the proper state or district executive committee may fill the vacancy by filing a certificate of endorsement with the proper officer as provided in sections 16.1-11-06 and 16.1-11-11.
3. If party endorsements by certificate have been made for any state or district office and a vacancy occurs in the slate of persons seeking nomination at the primary election because of the unavailability of the person who is seeking nomination by petition, that vacancy may not be filled except by petition.
4. If a vacancy occurs in a slate of statewide candidates after the candidates have been nominated at the primary election, the proper state ~~or district~~ executive committee may fill any vacancy by filing a certificate of nomination with the secretary of state. The chairman and secretary of the committee shall make and file with the secretary of state ~~the a~~ a certificate setting forth the cause of the vacancy, the name of the person for whom the new nominee is to be substituted, the fact that the committee was authorized to fill vacancies, and any further information as may be required to be given in an original certificate of nomination. When such a certificate is filed, the secretary of state, ~~in certifying shall~~ certify the new nomination to the various auditors, shall insert and the name of the person who has been nominated to fill the vacancy in place of the original nominee to the various auditors. If the secretary of state already has forwarded ~~his~~ the certificate, ~~he~~ the secretary of state forthwith shall certify to the ~~auditor of the proper county or counties~~ auditors the name and ~~post-office~~ new nominee, the office ~~he~~ the new nominee is nominated for, the party or political principle ~~he~~ the new nominee represents, and the

name of the person for whom the new nominee is substituted substituting. Failure to publish the name of a person substituted new nominee does not invalidate the election.

5. If a vacancy occurs in a slate of legislative candidates after the candidates have been nominated at the primary election, the proper district executive committee may fill the vacancy by filing a certificate of nomination with the county auditor of the new nominee's county of residence. The chairman and secretary of the committee shall make and file with the county auditor of the new nominee's county of residence a certificate setting forth the cause of the vacancy, the name of the person for whom the new nominee is to be substituted, the fact that the committee was authorized to fill vacancies, and any further information as may be required to be given in an original certificate of nomination. When the certificate is filed, the county auditor of the new nominee's county of residence shall certify the new nomination to the various auditors affected by the change and to the secretary of state by forwarding to them the name of the person who has been nominated to fill the vacancy in place of the original nominee. The certification must include the name and address of the new nominee, the office the new nominee is nominated for, the party or political principle the new nominee represents, and the name of the person for whom the new nominee is substituting. Failure to publish the name of a new nominee does not invalidate the election.

With the exception of vacancies filled pursuant to section 16.1-12-08, vacancies to be filled according to the provisions of ~~subsection 1, 2, or 3~~ of this section may be filled not later than ~~fifty-six~~ sixty days prior to the election; ~~and vacancies to be filled according to the provisions of subsection 4 may be filled not later than fifty-five days prior to the election.~~

SECTION 2. AMENDMENT. Section 16.1-12-08 of the North Dakota Century Code is amended and reenacted as follows:

16.1-12-08. Vacancy occurring on ballot before election day but after ballots are printed - Stickers used. If a vacancy occurs before four p.m. on the eighteenth day before the election day and after the printing of the ballots sixtieth day before the election, and any person is nominated before four p.m. on the eighteenth day before the election according to the provisions of this title subsections 4 and 5 of section 16.1-11-18 to fill the vacancy, the officer whose duty it is to have the ballots printed and distributed shall have printed on a requisite number of stickers the name of the substitute candidate and no other name. Stickers must be printed on the same color paper as the ballots to which they will be affixed. The officer shall send the stickers by a reliable method to the judges of election in the various precincts affected by the vacancy. The judges of election whose duty it is to distribute the ballots shall affix the stickers in the proper place on each ballot before it is given to the elector and shall cross out or otherwise obliterate the name of the original nominee causing the vacancy.

A vacancy under this section must be deemed to exist when a candidate nominated at the primary election dies or otherwise becomes disqualified to have the candidate's name printed on the ballot at the general election.

Approved March 21, 1997
Filed March 21, 1997

CHAPTER 198

SENATE BILL NO. 2290

(Senators Andrist, Lee, O'Connell)
(Representatives Boehm, S. Kelsh)

PRIMARY ELECTION BALLOTS

AN ACT to amend and reenact sections 16.1-11-21, 16.1-11-22, and 16.1-11-30 of the North Dakota Century Code, relating to the form of the primary election ballot; and to provide a statement of legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁷ **SECTION 1. AMENDMENT.** Section 16.1-11-21 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-21. County auditor to publish sample primary election ballot and notice of time and place of election. The county auditor shall publish in the official county newspaper, and if no newspaper is published in the county then in a newspaper published in an adjoining county in the state, the following:

1. A copy of the sample ballot of the primary election, as arranged by order and direction of the county auditor. The form of the sample ballot must conform in all respects to the form prescribed for the sample primary ballot by the secretary of state. The county auditor shall publish the sample ballot in all forms appropriate for the method or methods of voting in the county. ~~Sample ballots with inverted columns must be printed twice in each issue of the newspaper and in such manner as to assure that the column of each political party is displayed once in each issue in an upright position.~~ Absent voters' ballots may not be considered in determining which form of voting is used. Candidates from each legislative district ~~which~~ that falls within the boundaries of the county must be listed in a separate box or category by legislative district number to enable the voters in each legislative district to ascertain the legislative candidates in their specific district.
2. The date of the primary election.
3. The hours during which the polls will be open.
4. The statement that the primary election balloting will be held in the regular polling place in each precinct.

The notice must be published in the official county newspaper once each week for two consecutive weeks ~~prior to~~ before the primary election.

⁷ Section 16.1-11-21 was also amended by section 1 of Senate Bill No. 2093, chapter 199.

SECTION 2. AMENDMENT. Section 16.1-11-22 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-11-22. Primary election ballot - Form - Voters to vote for candidates of only one party. At the primary election there may be only one ballot for all parties or principles. The ballot must be in the following form:

1. The ballot must be entitled the "consolidated primary election ballot"; ~~and the title must be printed at both ends of the ballot so there is an upright title no matter which way the ballot is held.~~
2. Each party or principle having candidates at the primary election must have a separate column on the ballot; the columns must be separated by a solid six-point rule.
3. At the head of each column must be printed the name of the political party or principle which it represents.
4. In each column below the party or principle title must be printed: "You may vote for the candidates of only one party at the primary election. If you cast votes in more than one party column and vote for candidates of more than one party, your ballot will be rejected."
5. Immediately below the warning against voting for candidates of more than one party must be printed: "Put a crossmark (X) opposite the name of the candidate for whom you wish to vote. To vote for a person whose name is not printed on the ballot write or paste that person's name in the blank space provided for that purpose."
6. The offices specified in section 16.1-11-26 must be arranged in each column with the name of each office in the center of each party column at the head of the names of the aspirants for the office.
7. Immediately under the name of each office must be printed: "Vote for no more than _____ name (or names)."
8. At the side of the name of each aspirant and in a column must be printed a square or other figure for making a crossmark or other mark. No squares or other figures may be printed at the head of the ballot.
9. The political party or principle which cast the largest vote for governor at the most recent primary election at which the office of governor was voted upon must have the left-hand column, and the party or principle casting the next largest vote must have the next column, and so on.

The judges and the inspector of elections shall inform each elector at the primary, before voting, that if the voter votes for candidates of more than one party the voter's ballot will be rejected.

⁸ **SECTION 3. AMENDMENT.** Section 16.1-11-30 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-30. Separate column on primary election ballot required for each political party. The following political parties must be provided with separate columns on primary election ballots:

1. The republican party.
2. The democrat party.
3. Any party ~~which~~ that cast five percent of the total votes cast for governor at the last general election.
4. Any other party, if a petition signed by at least seven thousand qualified electors of this state is filed with the secretary of state before four p.m. of the sixtieth day ~~prior to~~ before a primary election, asking that a column be provided for ~~such~~ that party, naming it, and stating the platform principles ~~thereof~~ of the party. If ~~such~~ the petition is mailed it must be in the possession of the secretary of state before four p.m. on the sixtieth day. Candidates of ~~such~~ that party are entitled to the same rights and privileges as those of other parties.

~~Columns must be arranged so that any column is in an inverted position when the adjacent column or columns are in an upright position.~~

SECTION 4. LEGISLATIVE INTENT. It is the intent of the fifty-fifth legislative assembly that the secretary of state determine, by county, the number and percentage of party ballots that were void because a voter had voted in more than one party column at the 1998 primary election.

Approved April 3, 1997
Filed March 3, 1997

⁸ Section 16.1-11-30 was also amended by section 11 of Senate Bill No. 2368, chapter 189.

CHAPTER 199

SENATE BILL NO. 2093

(Judiciary Committee)

(At the request of the Secretary of State)

SAMPLE BALLOT PUBLICATION AND ARRANGEMENT

AN ACT to amend and reenact section 16.1-11-21, subsection 1 of section 16.1-11-27, and section 16.1-13-05 of the North Dakota Century Code, relating to the publication of sample ballots and the names of candidates on sample ballots being arranged alphabetically.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁹ **SECTION 1. AMENDMENT.** Section 16.1-11-21 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-21. County auditor to publish sample primary election ballot and notice of time and place of election. The county auditor shall publish in the official county newspaper, and if no newspaper is published in the county then in a newspaper published in an adjoining county in the state, the following:

1. A copy of the sample ballot of the primary election, as arranged by order and direction of the county auditor. The form of the sample ballot must conform in all respects to the form prescribed for the sample primary ballot by the secretary of state. The county auditor shall publish the sample ballot in all forms appropriate for the method or methods of voting in the county. ~~Sample ballots with inverted columns must be printed twice in each issue of the newspaper and in such manner as to assure that the column of each political party is displayed once in each issue in an upright position.~~ Absent voters' ballots may not be considered in determining which form of voting is used. Candidates from each legislative district which falls within the boundaries of the county must be listed in a separate box or category within the sample ballot by legislative district number to enable the voters in each legislative district to ascertain the legislative candidates in their specific district. Sample ballots used for publication purposes must be arranged using the rotation of the ballot in the precinct in the county which cast the highest total vote for governor at the last general election at which the office of governor was filled.
2. The date of the primary election.
3. The hours during which the polls will be open.

⁹ Section 16.1-11-21 was also amended by section 1 of Senate Bill No. 2290, chapter 198.

4. The statement that the primary election balloting will be held in the regular polling place in each precinct.

The notice must be published in the official county newspaper once each week for two consecutive weeks prior to the primary election and include a statement in substantially the following format:

The arrangement of candidate names appearing on ballots in your precinct may vary from the published sample ballots, depending upon the precinct and legislative district in which you reside.

SECTION 2. AMENDMENT. Subsection 1 of section 16.1-11-27 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~On sample ballots, the names of candidates for each office must be arranged alphabetically according to surnames~~ Sample ballots used for publication purposes must be arranged using the rotation of the ballot in the precinct in the county which cast the highest total vote for governor at the last general election at which the office of governor was filled.

SECTION 3. AMENDMENT. Section 16.1-13-05 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-05. Notice of election - Contents - Publication with sample ballot.

Notice of all general elections must be published by the county auditor in the official county newspaper at the same time as, and as a part of, the publication of the sample ballot preceding ~~such~~ the election. The notice must be substantially as follows:

Notice is hereby given that on Tuesday, the _____ day of November, 19____, at the polling places in the various precincts in the county of _____, an election will be held for the election of state, district, and county officers, which election will be opened at _____ a.m. and will continue open until _____ p.m. of that day with the following exceptions:

 Dated this _____ day of _____, 19_____
 Signed _____
 County Auditor

The county auditor shall publish a copy of the sample ballot of the general election once each week for two consecutive weeks prior to the election in the official county newspaper. If no newspaper is published in the county, the publication must be in a newspaper published in an adjoining county in the state. The form of the sample ballot as ordered and arranged by the county auditor must conform in all respects to the form prescribed by the secretary of state for the sample general election ballot. The county auditor shall publish the sample ballot in all forms appropriate for the method or methods of voting in the county. Absentee voter ballots may not be considered in determining which form of voting is used. Candidates from each legislative district which falls within the boundaries of the county must be listed in a separate box or category within the sample ballot by legislative district number to enable the voters in each legislative district to ascertain the legislative candidates in their specific district. Sample ballots used for publication purposes must be arranged using the rotation of the ballot in the precinct in the county which cast the highest

total vote for governor at the last general election at which the office of governor was filled. The notice must include a statement in substantially the following format:

The arrangement of candidate names appearing on ballots in your precinct may vary from the published sample ballots, depending upon the precinct and legislative district in which you reside.

Approved April 8, 1997

Filed April 8, 1997

CHAPTER 200

HOUSE BILL NO. 1159

(Judiciary Committee)

(At the request of the Secretary of State)

INDEPENDENT CANDIDATE NOMINATIONS AND PETITIONS

AN ACT to create and enact a new section to chapter 16.1-12 of the North Dakota Century Code, relating to the time allowed for independent candidates to circulate nominating petitions; to amend and reenact sections 16.1-12-02.2 and 16.1-12-04 of the North Dakota Century Code, relating to election boards counting write-in votes, certificates of write-in candidacy, write-in candidates seeking more than one office, and the secretary of state and county auditors certifying independent nominations to one another; and to repeal section 16.1-12-05 of the North Dakota Century Code, relating to the secretary of state certifying independent nominations to the county auditor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-12-02.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-12-02.2. Counting of write-in votes - Certificate of candidacy by write-in candidates.

1. An election board or canvassing board is ~~not required to~~ may not count any write-in vote for any:
 - a. Person who is required to file a certificate of write-in candidacy under this section but who has not filed a certificate of candidacy and been certified as a write-in candidate.
 - b. Fictitious person, nonperson, or person clearly not eligible to qualify for the office for which the vote was cast.
 - c. Statement concerning the candidates.
2. A person who intends to be a write-in candidate for president of the United States at the presidential preference contest or for statewide or judicial district office at any election shall file a certificate of write-in candidacy with the secretary of state by four p.m. on the twenty-first day before the contest or election. The certificate must contain the name and address of the candidate and be signed by the candidate. Before the thirteenth day before the contest or election, the secretary of state shall certify the names of the candidates to each county auditor as write-in candidates.
3. A person who intends to be a write-in candidate at the general election for president of the United States shall file a certificate of write-in candidacy with the secretary of state by four p.m. on the twenty-first day before the general election. The certificate must contain the names and

addresses of the candidates for presidential electors for that presidential candidate and a certification of acceptance signed by each candidate for elector. The candidate shall sign the certificate. The certificate may also include the name and address of a candidate for vice president of the United States and a certification of acceptance signed by that candidate. The secretary of state shall prescribe the form of the certificate of write-in candidacy and the certification of acceptance. Before the thirteenth day before the election, the secretary of state shall certify the names of the presidential candidates and the presidential electors to each county auditor as write-in candidates.

4. A person who intends to be a write-in candidate for any ~~other~~ legislative district office shall file a certificate of write-in candidacy with the election officer with whom the candidate would otherwise file to have the candidate's name placed on the ballot. The certificate must contain the name, address, and signature of the candidate. Certificates must be filed by four p.m. on the fourth day before the election. ~~A certificate under this subsection is not required when no names will appear on the ballot for that office.~~
5. A certificate under this section is not required when:
 - a. No names will appear on the ballot for an office;
 - b. The number of candidates appearing on the ballot for an office is less than the number to be elected; or
 - c. The number of candidates appearing on the ballot for a party office is less than the number of nominations a party is entitled to make. When certificates of write-in candidacy are not required under this chapter, all write-in votes must be counted.

A person required to file a certificate of write-in candidacy may not seek more than one office appearing on the primary and general election ballots.

SECTION 2. A new section to chapter 16.1-12 of the North Dakota Century Code is created and enacted as follows:

Nominating petition for an independent candidate not to be circulated more than ninety days prior to filing time. A petition provided for in this chapter may not be circulated or signed more than ninety days before the date when any petition must be filed under the provisions of this chapter. Any signatures to a petition obtained more than ninety days before that date may not be counted.

SECTION 3. AMENDMENT. Section 16.1-12-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-12-04. Certificates of nomination - Time and place of filing.

1. Certificates of nomination for nominees for offices to be filled by the qualified electors of the entire state must be filed with the secretary of state. Not less than fifty-five days before any general or special election to fill any statewide office, the secretary of state shall certify to each county auditor the names and addresses of the persons nominated for statewide office according to this chapter as shown on the certificates of nomination filed in the secretary of state's office.

2. Certificates of nomination for nominees for county offices and legislative offices must be filed with the county auditor of the county in which the candidate resides. The county auditor shall certify the names and addresses of legislative candidates filing certificates of nomination according to this chapter to the secretary of state. When a legislative district is composed of more than one county, the county auditor shall certify to the county auditors of the other counties comprising the legislative district the names and addresses of the candidates filing ~~the~~ certificates of nomination.
3. Certificates of nomination must, without regard to the means of delivery, be filed and in the actual possession of the appropriate officer not later than four p.m. on the sixtieth day prior to the day of election.
4. The secretary of state and the county auditors shall keep on file for six months all certificates of nomination filed with them under this chapter and all certificates of nomination must be open to public inspection during regular business hours.

SECTION 4. REPEAL. Section 16.1-12-05 of the North Dakota Century Code is repealed.

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 201

HOUSE BILL NO. 1234

(Representative Kretschmar)

CITY ELECTION RECOUNTS

AN ACT to amend and reenact sections 15-47-06, 16.1-16-01, 40-21-13, and 40-21-17 of the North Dakota Century Code, relating to school district, city, and statewide election recounts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-47-06 of the North Dakota Century Code is amended and reenacted as follows:

15-47-06. Election procedure in all school districts - Canvass of boards - Tie vote - Absent voters - Recounts. An election in a public school district, except as otherwise provided in this title, must be conducted and the votes must be canvassed in the manner provided by the laws of this state for the election of county officers. Immediately after the polls are closed, the judges shall count and canvass the votes for each office and within forty-eight hours after the polls are closed, the returns must be signed by the judges and clerks of the election and filed with the business manager of the school district. If the election results in a tie, the business manager of the district immediately, and in writing, shall notify the candidates between whom the tie exists, and within three days after the election, and at a time agreed upon by the candidates, the election must be decided in the presence of the judges and clerks of election in a manner agreed upon by the candidates. A record of the proceedings must be made in the records of the business manager of the district. The school board shall canvass all election returns and shall declare the result of any election within three days of the election, and in the case of a tie, within three days of the breaking of the tie pursuant to this section. The result of the election must be entered upon the records of the board. The person receiving the highest number of votes for each office in the district must be declared elected. Absent voters' ballots must be available in any school district election in accordance with chapter 16.1-07. Section 16.1-16-01 applies to public school district elections, except the members of the school board not subject to a recount and not disqualified under subdivision c of subsection 2 of section 16.1-05-02 shall perform the duties of the recount board, the school district business manager shall perform the duties of the county auditor when the election is not combined with the county, the school board takes the place of the county canvassing board, and all expenses of the recount must be paid as provided in section 15-28-10.

¹⁰ **SECTION 2. AMENDMENT.** Section 16.1-16-01 of the North Dakota Century Code is amended and reenacted as follows:

16.1-16-01. Election recounts. A recount of any primary, special, or general election for nomination or election to a congressional, state, district, legislative, or

¹⁰ Section 16.1-16-01 was also amended by section 1 of Senate Bill No. 2250, chapter 202.

county, or city office, or for the approval or disapproval of any measure or question submitted to the qualified electors of this state or one of its counties or cities must be conducted as follows:

1. A recount must be conducted when:
 - a. Any person failed to be nominated in a primary election by one percent or less of the highest vote cast for a candidate for the office sought.
 - b. Any person failed to be elected in a general or special election by one-half of one percent or less of the highest vote cast for a candidate for that office.
 - c. A question or measure submitted to the qualified electors has been decided by a margin not exceeding one-fourth of one percent of the total vote cast for and against the question at any election.
2. A demand for a recount may be made by any of the following:
 - a. Any person who failed to be nominated in a primary election by more than one percent and less than two percent of the highest vote cast for a candidate for the office sought.
 - b. Any person who failed to be elected in a general or special election by more than one-half of one percent and less than two percent of the highest vote cast for a candidate for that office.
3. A demand for a recount must be made within three days after the canvass of the votes by the county canvassing board in the case of county elections and city elections that are combined with the county, and by the state canvassing board in the case of congressional, state, district, or legislative elections. The demand must be in writing, must recite one of the conditions in subsection 2 as a basis for the recount, must contain a bond in an amount previously established by the auditor or auditors doing the recount sufficient to pay the cost of the recount, and must be filed with:
 - a. The secretary of state when the recount is for a congressional, state, district, or legislative office.
 - b. The county auditor when the recount is for a county office or city office when a city election is combined with the county.
4. Within four days after the canvass of the votes by the state canvassing board in the case of congressional, state, district, or legislative elections, the secretary of state shall notify all the county auditors to conduct recounts as required by subsection 1 and, when a timely recount demand is received and it is in proper form, as required by subsection 2. The secretary of state shall fix the date or dates of the recounts of legislative contests to be held within seven days after giving notice ~~that the auditor must conduct the recount~~ to the affected auditors that recounts must be conducted. The secretary of state shall fix the date or dates of the recounts of statewide races to be held within fourteen days after giving notice to the auditors that recounts must be conducted. Within four days after the canvass of votes by the county canvassing board, the

county auditor shall fix the date for recounts limited to his the county or those cities within the county which combined the election with the county. The date must be within eight days after the canvass. In all recount proceedings, the county auditor shall send notice of the date, place, and time of the recount to all candidates and petitioners involved by certified mail.

5. Recounts must be conducted by the county auditor who may employ up to four qualified electors of the county to assist in the recount. The county auditor shall review all paper, machine, and electronic voting system ballots, whether or not the ballots were counted at the precinct or the county canvass, and all properly postmarked absentee ballots cast pursuant to section 16.1-07-09, whether or not the ballots were counted at the precinct or the county canvass, to determine which ballots were cast and counted according to the law. The county auditor shall check the precinct count and the count of the county canvassing board. If the county auditor is a candidate involved in the recount, the county auditor shall be disqualified from acting thereon, and the clerk of the district court of the county shall perform the duties required of the county auditor by this section.
6. The persons entitled to participate at the recount are:
 - a. Each candidate involved in the recount, either personally or by a representative.
 - b. A qualified elector favoring each side of a question if the recount involves a question or proposition submitted to a vote of the electorate.

The persons allowed to participate may challenge the acceptance or exclusion of any ballot. The person challenging a ballot must state the reason for the challenge based upon the law, and the county auditor shall count the challenged ballot as he deems proper and shall then set the ballot aside with a notation that it was challenged and how it was counted. At the conclusion of the recount, the county auditor shall submit all challenged ballots to the recount board for decision. The recount board must be composed of the state's attorney of the county, the chairman of the board of county commissioners, and the clerk of the district court of the county. No person may serve on the recount board if he would not be qualified to serve on the election board pursuant to subsection 2 of section 16.1-05-02. If any of the members of the recount board are disqualified or cannot serve for any other reason, the members of the board of county commissioners who would be qualified to serve on the board shall appoint disinterested qualified electors of the county to serve as alternates. The recount board shall review all challenged ballots, and on majority vote shall decide how they shall be counted. The decision of the recount board is final, subject to the right to contest the election as provided in this chapter. If during the recount a recess is called, the county auditor shall take appropriate steps to safeguard the ballots.

7. The county auditor shall certify the results of the recount no later than three days after the recount. The recount result shall become the official result of the election in the county. The county auditor shall prepare a corrected abstract of the votes. In a recount limited to the county or

city, if the corrected abstract shows no change in the outcome of the election, no further action shall be taken. If the corrected abstract changes the outcome of the election, the county auditor shall issue certificates of nomination or election accordingly, and shall certify the new result of a question submitted to the qualified electors. In the case of a city election that is combined with a county election, the county auditor shall certify the new results of the election to the city auditor who is responsible for issuing new certificates of election if applicable.

8. In congressional, statewide, district, or legislative recounts, the county auditor shall, no later than three days after the recount, send by certified mail a certified copy of the corrected abstract to the secretary of state. The secretary of state shall immediately assemble the state canvassing board, who shall canvass the corrected abstracts and certify the election results. The secretary of state shall issue certificates of election or nomination or record the approval or disapproval of a question submitted to the qualified electors accordingly.
9. The expenses incurred in a recount of a county election must be paid by the county on a warrant by the county auditor. The expenses incurred in a recount of a city election must be paid by the city on a warrant by the city auditor. The expenses incurred in a recount of a congressional, state, or legislative election must be paid by the state from the general fund, upon approval by the secretary of state of a statement of expenses received from the county auditors. The expenses incurred in a recount demanded under subsection 2 of section 16.1-16-01 must be paid by the secretary of state or county auditor from the bond submitted by the person requesting the recount.
10. This section also applies to city elections that are not combined with the county, except, the city auditor, to the extent applicable, shall perform the duties of the county auditor.

SECTION 3. AMENDMENT. Section 40-21-13 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-21-13. Municipal elections to be governed by rules applicable to county elections - Absent voting. The manner of conducting, voting at, keeping poll lists, and canvassing votes at municipal elections, recounts, and contests of the results of the elections is governed, as nearly as possible and except as otherwise provided in this chapter, by the laws of this state applicable to elections and contests in the case of county officers. Absent voters' ballots must be available in municipal elections in accordance with chapter 16.1-07.

SECTION 4. AMENDMENT. Section 40-21-17 of the North Dakota Century Code is amended and reenacted as follows:

40-21-17. Highest number of votes elects in municipal election - Procedure on tie vote. The person having the highest number of votes for any municipal office shall be declared elected to such office. In case of a tie vote in the election of any municipal officer, ~~the choice shall be determined by a coin flip in the presence of the governing body of the municipality and in such manner as it shall direct~~ a recount must be conducted pursuant to section 16.1-16-01. If a recount results in a tie vote, the choice must be determined by a coin flip in the presence of the governing body of the municipality and in a manner it directs.

Approved March 25, 1997
Filed March 26, 1997

CHAPTER 202

SENATE BILL NO. 2250 (Senators W. Stenehjem, B. Stenehjem) (Representative Stenehjem)

POLITICAL SUBDIVISION ELECTION RECOUNTS

AN ACT to amend and reenact section 16.1-16-01 of the North Dakota Century Code, relating to election recounts for political subdivision elections.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹ **SECTION 1. AMENDMENT.** Section 16.1-16-01 of the North Dakota Century Code is amended and reenacted as follows:

16.1-16-01. Election recounts. A recount of any primary, special, or general election for nomination or election to a congressional, state, district, legislative, or county office, or for the approval or disapproval of any measure ~~or~~, question, or bond issue submitted to the qualified electors of this state or one of its ~~counties~~ political subdivisions must be conducted as follows:

1. A recount must be conducted when:
 - a. Any person failed to be nominated in a primary election by one percent or less of the highest vote cast for a candidate for the office sought.
 - b. Any person failed to be elected in a general or special election by one-half of one percent or less of the highest vote cast for a candidate for that office.
 - c. A question ~~or~~, measure, or bond issue submitted to the qualified electors has been decided by a margin not exceeding one-fourth of one percent of the total vote cast for and against the question at any election.
2. A demand for a recount may be made by any of the following:
 - a. Any person who failed to be nominated in a primary election by more than one percent and less than two percent of the highest vote cast for a candidate for the office sought.
 - b. Any person who failed to be elected in a general or special election by more than one-half of one percent and less than two percent of the highest vote cast for a candidate for that office.

¹¹ Section 16.1-16-01 was also amended by section 2 of House Bill No. 1234, chapter 201.

3. A demand for a recount must be made within three days after the canvass of the votes by the county canvassing board in the case of county elections, and by the state canvassing board in the case of congressional, state, district, or legislative elections. The demand must be in writing, must recite one of the conditions in subsection 2 as a basis for the recount, must contain a bond in an amount previously established by the auditor or auditors doing the recount sufficient to pay the cost of the recount, and must be filed with:
 - a. The secretary of state when the recount is for a congressional, state, district, or legislative office.
 - b. The county auditor when the recount is for a county office.
4. Within four days after the canvass of the votes by the state canvassing board in the case of congressional, state, district, or legislative elections, the secretary of state shall notify all the county auditors to conduct recounts as required by subsection 1 and, when a timely recount demand is received and it is in proper form, as required by subsection 2. The secretary of state shall fix the date of the recounts within seven days after giving notice that the auditor must conduct the recount. Within four days after the canvass of votes by the county canvassing board or other political subdivision canvassing board, the county auditor or other political subdivision election official shall fix the date for recounts limited to ~~his~~ the county or other political subdivision. The date must be within eight days after the canvass. In all recount proceedings, the county auditor or other election official, as appropriate, shall send notice of the date, place, and time of the recount to all candidates and petitioners involved by certified mail.
5. ~~Recounts~~ Except for recounts conducted by political subdivisions other than counties, recounts must be conducted by the county auditor who may employ up to four qualified electors of the county to assist in the recount. The county auditor shall review all paper, machine, electronic voting system, and absentee ballots, whether ~~or not~~ the ballots were counted at the precinct or the county canvass, to determine which ballots were cast and counted according to the law. The county auditor shall check the precinct count and the count of the county canvassing board. If the county auditor is a candidate involved in the recount, the county auditor ~~shall be~~ is disqualified from acting thereon, and the clerk of the district court of the county shall perform the duties required of the county auditor by this section. The election officer in a political subdivision other than a county which is conducting a recount shall administer a recount in the same manner as is required under this subsection for counties with respect to political subdivision ballot measures, questions, or bond issues.
6. The persons entitled to participate at the recount are:
 - a. Each candidate involved in the recount, either personally or by a representative.
 - b. A qualified elector favoring each side of a question if the recount involves a question or proposition submitted to a vote of the electorate.

The persons allowed to participate may challenge the acceptance or exclusion of any ballot. The person challenging a ballot must state the reason for the challenge based upon the law, and the county auditor or other political subdivision election official shall count the challenged ballot as ~~he~~ the auditor or election official deems proper and shall then set the ballot aside with a notation that it was challenged and how it was counted. At the conclusion of the recount, the county auditor or other election official shall submit all challenged ballots to the recount board for decision. ~~The~~ Except for political subdivision recounts other than counties, the recount board must be composed of the state's attorney of the county, the chairman of the board of county commissioners, and the clerk of the district court of the county. Unless otherwise specified by law, for a political subdivision other than a county, the governing body of the political subdivision shall appoint the recount board. No person may serve on the recount board if ~~he~~ the person would not be qualified to serve on the election board pursuant to subsection 2 of section 16.1-05-02. If any of the members of the recount board are disqualified or cannot serve for any other reason, the members of the board of county commissioners or other political subdivision governing body who would be qualified to serve on the board shall appoint disinterested qualified electors of the county or other political subdivision to serve as alternates. The recount board shall review all challenged ballots, and on majority vote shall decide how ~~they shall be~~ those ballots are counted. The decision of the recount board is final, subject to the right to contest the election as provided in this chapter. If during the recount a recess is called, the county auditor or other political subdivision election official shall take appropriate steps to safeguard the ballots.

7. The county auditor or other election official shall certify the results of the recount no later than three days after the recount. The recount result ~~shall become~~ is the official result of the election in the county or other political subdivision. The county auditor or other election official shall prepare a corrected abstract of the votes. In a recount limited to the county or other political subdivision, if the corrected abstract shows no change in the outcome of the election, no further action ~~shall~~ may be taken. If the corrected abstract changes the outcome of the election, the county auditor or other election official shall issue certificates of nomination or election accordingly, and shall certify the new result of a question submitted to the qualified electors.
8. In congressional, statewide, district, or legislative recounts, the county auditor shall, no later than three days after the recount, send by certified mail a certified copy of the corrected abstract to the secretary of state. The secretary of state shall immediately assemble the state canvassing board, who shall canvass the corrected abstracts and certify the election results. The secretary of state shall issue certificates of election or nomination or record the approval or disapproval of a question submitted to the qualified electors accordingly.

9. The expenses incurred in a recount of a county election must be paid by the county on a warrant by the county auditor. The expenses incurred in a recount of a political subdivision other than a county election must be paid by that political subdivision. The expenses incurred in a recount of a congressional, state, or legislative election must be paid by the state from the general fund, upon approval by the secretary of state of a statement of expenses received from the county auditors. The expenses incurred in a recount demanded under subsection 2 of section 16.1-16-01 must be paid by the secretary of state or county auditor from the bond submitted by the person requesting the recount.

Approved March 25, 1997

Filed March 26, 1997

FIRES

CHAPTER 203

SENATE BILL NO. 2130

(Political Subdivisions Committee)
(At the request of the State Forester)

STATE FORESTER COOPERATION WITH FIRE DISTRICT

AN ACT to amend and reenact section 18-02-07 of the North Dakota Century Code, relating to cooperation of the state forester with rural fire departments and rural fire protection districts; and to repeal sections 18-02-01, 18-02-02, 18-02-03, 18-02-04, 18-02-05, 18-02-06, 18-02-08, and 18-02-09 of the North Dakota Century Code, relating to forest fire wardens.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 18-02-07 of the North Dakota Century Code is amended and reenacted as follows:

18-02-07. Cooperation of state forester and other agencies - Fire and forest protection. The state forester may cooperate and contract jointly or severally with departments and agencies of this or other states, with federal agencies, with counties, townships, or other political subdivisions, including; ~~but not limited to;~~ rural fire protection districts, rural fire departments, municipal, and other corporations and associations, or with individuals ~~to~~ in the best interest interests of the people and the state, in forest surveys, research in forestry, forest protection, including assisting fire departments in protection of forests and other resources and in assisting landowners to secure adoption of better forestry ~~practice~~ practices. The state forester ~~is specifically authorized to~~ may:

1. Cooperate and contract with the United States or any appropriate agency thereof to receive and use federal aid and matching funds which the state and its subdivisions may become eligible to receive.
2. Apply for, receive, and expend federal grants-in-aid and matching funds for fire protection services, and generally aid rural fire departments and rural fire protection districts with all activities customary in the prevention and suppression of forest, brush, and grassland fires.
3. Purchase or otherwise acquire fire protection equipment to lease loan or sell to rural fire departments and ~~generally to aid rural fire departments and~~ rural fire protection districts.

SECTION 2. REPEAL. Sections 18-02-01, 18-02-02, 18-02-03, 18-02-04, 18-02-05, 18-02-06, 18-02-08, and 18-02-09 of the North Dakota Century Code are repealed.

Approved March 6, 1997
Filed March 6, 1997

CHAPTER 204

SENATE BILL NO. 2144

(Senators Mutzenberger, Heitkamp, Klein)
(Representatives Drovdal, Kroeplin, Nichols)

FIREFIGHTERS RELIEF ASSOCIATION BENEFITS

AN ACT to amend and reenact section 18-11-15 of the North Dakota Century Code, relating to benefits under the alternate firefighters relief association plan.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 18-11-15 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

18-11-15. Service pensions - Qualifications.

1. A monthly service pension must be paid to members of the association with the following qualifications:

Years of service	Years of age at retirement	Percent of first-class firefighter's monthly salary on January first during year the pension is paid
20	50	40%
21	51	42%
22	52	44%
23	53	46%
24	54	48%
25	55	50%
26	56	52%
27	57	54%
28	58	56%
29	59	58%
30	60	60%

2. Except for members participating in a firefighters relief association paying a monthly service pension to members of the association under subsection 4 or 5, all members must serve twenty years before they are eligible for a service pension. Members participating in a firefighters relief association paying a monthly service pension to members of the association under subsection 4 or 5 must serve ten years before they are eligible for a service pension. However, any member who has twenty years of service or ten years of service with a firefighters relief association paying a monthly service pension to members of the association under subsection 4 or 5, and who has not attained retirement age may retire from the department without forfeiting the right to a service pension. The association, in its bylaws, may establish a retirement age of not less than fifty years, at which time the service pension becomes payable. This retirement age may be established for all firefighters or classes of firefighters by birth dates. A person who has served twenty years or ten years with a firefighters relief association

paying monthly service pensions to members of the association under subsection 4 or 5 or more and who is separated from service must, upon application, be placed on the deferred pension roll of the association, and after reaching retirement age, the association shall, upon application therefor, pay the service pension from the date the member attains eligibility at a rate of forty percent of the monthly salary of a first-class firefighter as determined on January first of the year in which the pension is paid. Any person making such application waives all other rights, claims, or demands against the association for any cause, except those causes that may have arisen from, or that may be attributable to, the person's service on the fire department.

3. With the consent of the governing body of the city involved, and in substitution for the pension payment schedule provided in subsection 1, a firefighters relief association shall pay a monthly service pension to members of the association with the following qualifications, the following amounts:

Years of service	Years of age	Percent of first-class firefighter's monthly salary on January first during year the pension is paid
20	50	40%
21	51	42%
22	52	44%
23	53	46%
24	54	48%
25	55	50%
26	56	52%
27	57	54%
28	58	56%
29	59	58%
30	60	60%

4. With the consent of the governing body of the city involved, and in substitution for the pension payment schedule provided in subsection 1 or 3, a firefighters relief association shall pay a monthly service pension to members of the association with the following qualifications, the following amounts:

Years of service	Years of age	Percent of first-class firefighter's monthly salary on January first during year the pension is paid
10	50	20%
11	50	22%
12	50	24%
13	50	26%
14	50	28%
15	50	30%
16	50	32%
17	50	34%
18	50	36%
19	50	38%
20	50	40%
21	51	42%

22	52	44%
23	53	46%
24	54	48%
25	55	50%
26	56	52%
27	57	54%
28	58	56%
29	59	58%
30	60	60%

5. With the consent of the governing body of the city involved, upon the advice of its actuary that the pension schedule can be implemented on an actuarially sound basis and notification to the legislative council's employee benefits programs committee, and in substitution for the pension payment schedule provided in subsection 1, 3, or 4, a firefighters relief association shall pay a monthly service pension to members of the association with the following qualifications, the following amount:

<u>Years of service</u>	<u>Years of age</u>	<u>Percent of first-class firefighter's monthly salary on January first during year the pension is paid</u>
<u>10</u>	<u>50</u>	<u>20%</u>
<u>11</u>	<u>50</u>	<u>22%</u>
<u>12</u>	<u>50</u>	<u>24%</u>
<u>13</u>	<u>50</u>	<u>26%</u>
<u>14</u>	<u>50</u>	<u>28%</u>
<u>15</u>	<u>50</u>	<u>30%</u>
<u>16</u>	<u>50</u>	<u>32%</u>
<u>17</u>	<u>50</u>	<u>34%</u>
<u>18</u>	<u>50</u>	<u>36%</u>
<u>19</u>	<u>50</u>	<u>38%</u>
<u>20</u>	<u>50</u>	<u>40%</u>
<u>21</u>	<u>51</u>	<u>43%</u>
<u>22</u>	<u>52</u>	<u>46%</u>
<u>23</u>	<u>53</u>	<u>49%</u>
<u>24</u>	<u>54</u>	<u>52%</u>
<u>25</u>	<u>55</u>	<u>55%</u>
<u>26</u>	<u>56</u>	<u>58%</u>
<u>27</u>	<u>57</u>	<u>61%</u>
<u>28</u>	<u>58</u>	<u>64%</u>
<u>29</u>	<u>59</u>	<u>67%</u>
<u>30</u>	<u>60</u>	<u>70%</u>

6. Benefits with respect to a member may not exceed the maximum benefits specified under section 415 of the Internal Revenue Code; 26 U.S.C. 415 for governmental plans. This section does not constitute an election under section 415(b)(10)(C) of the Internal Revenue Code; 26 U.S.C. 415(b)(10)(C).

Approved March 20, 1997
 Filed March 20, 1997

FOODS, DRUGS, OILS, AND COMPOUNDS

CHAPTER 205

HOUSE BILL NO. 1359

(Representative Mickelson)

DRUG OFFENSES

AN ACT to amend and reenact subsection 4 of section 19-03.1-23 of the North Dakota Century Code, relating to drug offenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ **SECTION 1. AMENDMENT.** Subsection 4 of section 19-03.1-23 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. A person at least ~~twenty-one~~ eighteen years of age who solicits, induces, intimidates, employs, hires, or uses a person under eighteen years of age to ~~unlawfully transport, carry, sell, give away, prepare for sale, or peddle~~ aid or assist in the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance for the purpose of receiving consideration or payment for the manufacture or delivery of any controlled substance ~~except marijuana~~ is guilty of a class B felony and must be sentenced:
 - a. For the first offense, to imprisonment for at least four years.
 - b. For a second or subsequent offense, to imprisonment for at least five years.
 - c. It is not a defense to a violation of this subsection that the defendant did not know the age of a person protected under this subsection.

Approved April 10, 1997
Filed April 11, 1997

¹ Section 19-03.1-23 was also amended by section 3 of House Bill No. 1180, chapter 131.

CHAPTER 206**HOUSE BILL NO. 1085**

(Representatives Carlisle, DeKrey, Mahoney)
(Senator Nalewaja)

CONTROLLED SUBSTANCE SUBPOENAS

AN ACT to amend and reenact subsection 5 of section 19-03.1-37 of the North Dakota Century Code, relating to subpoenas by the defendant in a controlled substance proceeding.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 19-03.1-37 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. Notwithstanding any statute or rule to the contrary, ~~the~~ a defendant who has been found to be indigent by the court in the criminal proceeding at issue may subpoena the state toxicologist or the director of the forensic sciences division of the state department of health or any employee of either to testify at the preliminary hearing and trial of the issue at no cost to the defendant. If the state toxicologist, the director of the forensic sciences division of the state department of health, or any employee of either, is subpoenaed to testify by a defendant who is not indigent and the defendant does not call the witness to establish relevant evidence, the court shall order the defendant to pay costs to the witness as provided in section 31-01-16.

Approved April 9, 1997
Filed April 10, 1997

CHAPTER 207**SENATE BILL NO. 2277**

(Senator Mutch)

PETROLEUM PRODUCTS INSPECTION FEES

AN ACT to amend and reenact section 19-10-19 of the North Dakota Century Code, relating to inspection fees for petroleum products.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-10-19 of the North Dakota Century Code is amended and reenacted as follows:

19-10-19. Inspection fees. Every person licensed by the tax commissioner as a motor vehicle fuel, ~~or special fuels, or liquefied petroleum wholesale~~ dealer shall pay to the tax commissioner an inspection fee of one-fortieth of a cent per gallon [3.79 liters] for every gallon [3.79 liters] of gasoline, kerosene, tractor fuel, heating oil, or diesel fuel sold or used during a calendar month except those gallons sold out of state or those gallons sold as original package sales as defined in chapters 57-43.1 and 57-43.2. The fee must accompany the monthly report required in the following section and is due no later than the twenty-fifth day of each calendar month for the preceding month. The tax commissioner shall forward all money collected under this section to the state treasurer monthly, and the state treasurer shall place the money in the general fund of the state. The tax commissioner shall make available annually a report by licensed dealer listing the number of gallons [liters] of motor vehicle fuel and special fuels upon which the inspection fee has been paid. The provisions of chapters 57-43.1 and 57-43.2 pertaining to the administration of motor vehicle fuel and special fuels taxes not in conflict with the provisions of this chapter govern the administration of the inspection fee levied by this chapter.

Approved March 13, 1997

Filed March 13, 1997

CHAPTER 208

SENATE BILL NO. 2131

(Agriculture Committee)

(At the request of the Commissioner of Agriculture)

LIVESTOCK MEDICINE, PESTICIDE, AND FERTILIZER REGISTRATION FEES

AN ACT to amend and reenact sections 19-14-02, 19-14-04, 19-18-04, and 19-20.1-03.1 of the North Dakota Century Code, relating to livestock medicine registrations and registration fees, pesticide registrations, and fertilizer distributors' licenses; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-14-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-14-02. Registration of livestock medicine. The commissioner of agriculture, upon the application of the manufacturer or distributor of livestock medicine and the payment of the registration fee prescribed in section 19-14-04, shall register any livestock medicine that does not violate this chapter. ~~The registration expires on June thirtieth of each year~~ Registration covers a two-year period beginning July first and ending June thirtieth of the second ensuing year unless it is canceled sooner because a change is made in the ingredients or formula of manufacture or in the name, brand, or trademark under which the medicine is sold. In the event of any change, the medicine must be registered anew in the same manner as upon an original application.

SECTION 2. AMENDMENT. Section 19-14-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-14-04. Registration fee. Prior to each ~~annual~~ two-year registration, a registration fee of ~~ten~~ twenty dollars must be paid to the commissioner of agriculture for each livestock medicine that is registered.

SECTION 3. AMENDMENT. Section 19-18-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-18-04. Registration - Fees. Any person before selling or offering for sale any pesticide for use within this state shall file biennially with the commissioner an application for registration of the pesticide. The application must:

1. Give the name and address of each manufacturer or distributor.
2. Give the name and brand of each product registered.
3. Be accompanied by a current label of each product so registered.
4. Be accompanied by a registration fee of three hundred dollars for each product registered. At the close of each calendar month, the commissioner shall transmit to the state treasurer all moneys received for

the registrations. The state treasurer shall credit fifty dollars for each registered product to the general fund in the state treasury and the remainder of the registration fee for each registered product to the environment and rangeland protection fund.

5. Be accompanied by a material safety data sheet.

The commissioner may require an applicant or registrant to provide efficacy, toxicity, residue, and any other data necessary to determine if the pesticide will perform its intended function without unreasonable adverse effects on the environment. If the commissioner finds that the application conforms to law, the commissioner shall issue to the applicant a certificate of registration of the product. If after public hearing before the commissioner the application is denied, the product may not be offered for sale.

Each registration covers a two-year period beginning January first and expiring December thirty-first of the following year. A certificate of registration may not be issued for a term longer than two years, and is not transferable from one person to another, or from the ownership to whom issued to another ownership, or from one place to another place or location. A penalty of fifty percent of the license or registration fee must be imposed if the license or certificate of registration is not applied for on or before January thirty-first following the expiration date, or within the same month the pesticides are first manufactured or sold within this state. Each product must go through a two-year discontinuance period in order to clear all outstanding products in the channel of trade.

This section does not apply to a pesticide sold by a retail dealer if the registration fee has been paid by the manufacturer, jobber, or any other person, as required by this section.

SECTION 4. AMENDMENT. Section 19-20.1-03.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-20.1-03.1. License required - Penalty. A person may not distribute any fertilizer, soil amendment, or plant amendment in this state without first obtaining a distributor's license from the commissioner. However, a distributor's license is not required for those distributors selling only specialty fertilizers. A license must be obtained for each location or mobile mechanical unit used by a distributor in the state. The application for the license must be submitted on a form furnished by the commissioner, and must be accompanied by a fee of fifty one hundred dollars. ~~All licenses expire on June thirtieth of each year.~~ A license covers a two-year period beginning July first and ending June thirtieth of the second ensuing year. License renewal applications received after July thirty-first may be assessed a penalty fee of twenty dollars. Licenses are not transferable, and each license must be conspicuously posted at each location and must accompany each mobile mechanical unit operating in the state.

Approved March 21, 1997
Filed March 21, 1997

CHAPTER 209

HOUSE BILL NO. 1215

(Representatives Kempenich, DeKrey, Skarphol, Thorpe)
(Senators Solberg, Wanzek)

ANHYDROUS AMMONIA CONTAINERS

AN ACT to create and enact four new sections to chapter 19-20.2 of the North Dakota Century Code, relating to the use and testing of anhydrous ammonia storage containers and the bulk delivery of anhydrous ammonia; and to amend and reenact sections 19-20.2-01 and 19-20.2-08.2 of the North Dakota Century Code, relating to safety requirements for the handling and storage of anhydrous ammonia.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-20.2-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-20.2-01. Anhydrous ammonia safety rules. The commissioner of agriculture shall adopt rules necessary to implement this chapter and adopt the 1989 American national standard safety requirements for the storage and handling of anhydrous ammonia, except sections 2.5, 5.2.1, 5.2.2.1, and 5.2.2.2. Sections 2.5, 5.2.1, 5.2.2.1, and 5.2.2.2 of the 1989 American national standard safety requirements are adopted as follows:

1. (2.5) Refers to paragraphs U-68, U-69, U-200, or U-201 of section VIII of the boiler and pressure vessel code of the American society of mechanical engineers, 1949 edition, or to section VIII division I of the boiler and pressure vessel code of the American society of mechanical engineers, 1950 edition, through the current edition including addenda and applicable code case interpretations.

Where referenced in this standard only section VIII division I of the American society of mechanical engineers code applies except that paragraphs UG-125 through UG-135 and paragraph UW-2 do not apply.

2. (5.2.1) Containers used with systems covered in sections 6, 9, 11, and 12 must be made of steel or other material compatible with ammonia and tested in accordance with the current American society of mechanical engineers code. An exception to the American society of mechanical engineers code requirements is that construction under table UW-12 at a basic joint efficiency of under eighty percent is not authorized.
3. (5.2.2.1) For new ~~tanks~~ containers installed or purchased after January 1, 1996, the entire container must be post-weld heat treated after completion of all welds in or to the shells and heads. The method employed must be as prescribed in the American society of mechanical engineers code. It is recommended that post-weld heat treatment be performed in a furnace of a size sufficient to accommodate the entire container. Welded attachments to pads may be made after post-weld heat treatment. An implement of husbandry does not require post-weld

heat treatment if the implement is fabricated with hot formed heads or with cold formed heads that have been stress relieved.

4. (5.2.2.2) Steels used in fabricating pressure containing parts of a container may not exceed a specified tensile strength of ~~seventy-five~~ seventy thousand pounds per square inch [~~517110~~ 482636 kilopascals], as noted in the American society of mechanical engineers code, section II, part D, except that this does not apply to sections 8, 9, and 10. ~~Allowances for tensile strength of up to twenty thousand pounds per square inch [137900 kilopascals] above those given in the American society of mechanical engineers code, section II, part D, are permitted. An implement of husbandry may be fabricated from steel having a specified tensile strength of seventy-five thousand pounds per square inch [517110 kilopascals].~~

SECTION 2. A new section to chapter 19-20.2 of the North Dakota Century Code is created and enacted as follows:

Reinstalled and secondhand anhydrous ammonia storage containers - Requirement.

1. Before anhydrous ammonia may be stored in a reinstalled or secondhand container, including a nurse tank, the person intending to store the anhydrous ammonia shall furnish the chief boiler inspector with:
 - a. Evidence that the container is registered with the national board of boiler and pressure vessel inspectors; or
 - b. The manufacturer's data report for the container.
2. Subsection 1 is not applicable to the owner of an anhydrous ammonia storage container installed in this state before November 1, 1987, unless the storage container is reinstalled at another location.

SECTION 3. AMENDMENT. Section 19-20.2-08.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-20.2-08.2. Prohibitions. The following action is prohibited:

1. Filling a nurse tank directly from a rail car.
2. Filling or using a nurse tank that has an outdated hose.
3. Filling or using a nurse tank that has outdated relief valves.
4. Towing more than two nurse tanks on a public road.
5. Filling department of transportation transport containers not currently certified by meeting the requirements of the department of transportation.
6. Filling anhydrous ammonia storage ~~tanks~~ containers not meeting the requirements of this chapter.

SECTION 4. A new section to chapter 19-20.2 of the North Dakota Century Code is created and enacted as follows:

Anhydrous ammonia - Bulk delivery. Upon obtaining a commercial driver's license with an endorsement for hazardous materials, a person may transport anhydrous ammonia in a bulk delivery vehicle and may fill, from the bulk delivery vehicle, nurse tanks with anhydrous ammonia.

SECTION 5. A new section to chapter 19-20.2 of the North Dakota Century Code is created and enacted as follows:

Hydrostatic test procedures. Any hydrostatic test conducted under section 19-20.2-05 must comply with the requirements of the national board inspection code (ANSI-NB 23) and be conducted in a manner approved by the chief boiler inspector.

SECTION 6. A new section to chapter 19-20.2 of the North Dakota Century Code is created and enacted as follows:

Wet fluorescent magnetic particle test procedures. Any wet fluorescent magnetic particle test of a pressure vessel weld conducted under section 19-20.2-05 must comply with the requirements of the society for nondestructive testing SNT-TC-1A standard and must be conducted by a person certified as a level II technician by the society.

Approved April 8, 1997
Filed April 8, 1997

GAME, FISH, PREDATORS, AND BOATING

CHAPTER 210

HOUSE BILL NO. 1395 (Representatives Carlson, Torgerson)

GAME AND FISH PUBLIC ACCESS PROGRAM

AN ACT to create and enact a new section to chapter 20.1-02 of the North Dakota Century Code, relating to a public access program; to amend and reenact subsections 18 and 19 of section 20.1-02-05, subsection 41 of section 20.1-03-12, and section 20.1-03-12.1 of the North Dakota Century Code, relating to a public access program; and to repeal section 20.1-02-16.3 of the North Dakota Century Code and sections 2, 3, 4, 5, and 6 of chapter 278 of the 1989 Session Laws, relating to the small and big game habitat restoration trust fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 18 and 19 of section 20.1-02-05 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

18. Provide for the funding of a private land habitat and access improvement program with moneys derived from the interest earned on the game and fish fund and habitat restoration stamp fees. The ~~state treasurer~~ director shall place ~~the interest money~~ these funds in a special fund called the "game and fish department private land habitat and access improvement fund".
19. Carry out a private land habitat and access improvement program by:
 - a. Entering into cost-sharing, habitat enhancement, and access agreements with landowners or agencies working on private land to help defray all or a portion of their share of ~~certain~~ local, state, or federally sponsored conservation practices considered beneficial to fish and wildlife.
 - b. ~~Annual leasing~~ Leasing and development of developing fish and wildlife habitat or sport fishing areas on private land. Public access to leased land may not be prohibited.
 - c. Carrying out practices that will alleviate depredations caused by predatory animals and big game animals.
 - d. Publishing and selling a booklet on an annual basis describing lands that are open to public access in this state.

- e. Receiving advice from the game and fish advisory board concerning expenditures from the game and fish private land habitat and access improvement fund.

SECTION 2. A new section to chapter 20.1-02 of the North Dakota Century Code is created and enacted as follows:

Public access program - Private landowner assistance to promote public hunting access.

1. The director may establish programs for landowner assistance that encourage public access to private lands for purposes of hunting.
2. Rules adopted by the director to implement this section may address:
 - a. A hunter management program consisting of a cooperative agreement between landowners and the department, and including other resource management agencies when appropriate, that allows public hunting with certain restrictions or use rules.
 - b. A hunting access enhancement program consisting of incentives for private landowners who allow public hunting access on their land.
 - c. Development of similar efforts outside the scope of the program that are designed to promote public access to private lands for hunting purposes.
3. The director may not structure a program in a manner that provides assistance to a private landowner who charges a fee for hunting access to private land that is enrolled in the program or who does not provide reasonable public hunting access to private land that is enrolled in the program. The director shall develop criteria by which tangible benefits are allocated to participating landowners, and the director may distribute the benefits to participating landowners. Benefits must be provided to offset potential impacts associated with public hunting access, including those associated with general ranch maintenance, conservation efforts, weed control, fire protection, liability insurance, roads, fences, and parking area maintenance.

SECTION 3. AMENDMENT. Subsection 41 of section 20.1-03-12 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41. For a combination license, ~~twenty-five~~ twenty-seven dollars.

SECTION 4. AMENDMENT. Section 20.1-03-12.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-03-12.1. Habitat restoration stamp required - Use of revenue - No land purchases allowed. A habitat restoration stamp is required for every resident and nonresident general game license for which a stamp fee of ~~three~~ five dollars must be charged. The habitat restoration stamp fee is in addition to the annual general game license fee charged under section 20.1-03-12. No land may be purchased with habitat restoration stamp moneys. All moneys generated by ~~the~~ habitat restoration stamp program, including the habitat restoration stamp print, the interest earned on ~~the habitat restoration stamp program, the interest earned on any unspent habitat~~

~~restoration stamp program funds, and any and all other moneys resulting from the habitat restoration stamp program fees must be placed in the game and fish private land habitat restoration stamp and access improvement fund and are intended to provide a fund to lease privately owned lands for wildlife habitat. Not more than ten percent of this fund may be used for administrative purposes. All other moneys generated by the habitat restoration stamp program must be used for lease payments. Any moneys generated by the habitat restoration stamp program and not expended during a biennium must be expended for the same purposes during the next biennium. Any land needed for reestablishing the wildlife population and habitat may be leased for periods up to six years, but no more than forty acres [16.19 hectares] in any section [259.00 hectares] of land may be leased for these purposes. Hunting may not be prohibited on these lands. In those judicial districts encompassing the historically prime pheasant range, as determined by the director, fifty percent of the expenditures within that judicial district must be for pheasant restoration and enhancement.~~

SECTION 5. REPEAL. Section 20.1-02-16.3 of the 1995 Supplement to the North Dakota Century Code and sections 2, 3, 4, 5, and 6 of chapter 278 of the 1989 Session Laws are repealed.

SECTION 6. TRANSFER. The state treasurer shall transfer the balance of the small and big game habitat restoration trust fund to the game and fish department private land habitat and access improvement fund on August 1, 1997.

Approved March 25, 1997
Filed March 25, 1997

CHAPTER 211**HOUSE BILL NO. 1056**

(Legislative Council)
(Government Organization Committee)

**WETLANDS MEDIATION ADVISORY BOARD
ELIMINATED**

AN ACT to repeal sections 20.1-02-18.4, 20.1-02-18.5, and 20.1-02-18.6 of the North Dakota Century Code, relating to the wetlands mediation advisory board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Sections 20.1-02-18.4, 20.1-02-18.5, and 20.1-02-18.6 of the North Dakota Century Code are repealed.

Approved March 7, 1997

Filed March 10, 1997

CHAPTER 212

HOUSE BILL NO. 1172

(Representatives Wald, Carlson, Freier)
(Senators Naaden, Solberg, Urlacher)

NONRESIDENT LANDOWNER PREFERENCE DEER LICENSES

AN ACT to amend and reenact subsections 3 and 4 of section 20.1-03-11 of the North Dakota Century Code, relating to gratis and preferential landowner licenses to hunt deer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ **SECTION 1. AMENDMENT.** Subsections 3 and 4 of section 20.1-03-11 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. A resident who has executed a lease for at least one hundred sixty acres [64.75 hectares] of land and who actively farms or ranches that land or a ~~resident person~~ who holds title to at least one hundred sixty acres [64.75 hectares] of land is eligible to apply for a license to hunt deer without charge, or if that person is a nonresident upon payment of the fee requirement for a nonresident big game license, upon filing an affidavit describing that land. The land must be within a unit open for the hunting of deer. The license must include a legal description of the eligible land described in the affidavit and may be used to hunt deer only upon that land. Upon request a lessee shall provide proof that the land described in the affidavit is leased for agricultural purposes. A ~~resident person~~ who is eligible for a license under this subsection may transfer that eligibility for the license to a spouse or legal dependent residing customarily with ~~the resident that person,~~ but no more than one license may be issued under this subsection for any qualifying land. A ~~resident person~~ transferring eligibility under this subsection may not receive a license under this subsection for the season for which the eligibility was transferred. If not otherwise specified in an agricultural lease, the landowner is entitled to receive the license.
4. One percent of the total deer licenses and permits to hunt deer with guns to be issued in any unit or subunit as described in the governor's proclamation, including licenses issued to nonresidents under subsection 3, must be allocated for nonresidents.

Approved March 20, 1997
Filed March 20, 1997

¹ Section 20.1-03-11 was also amended by section 1 of Senate Bill No. 2137, chapter 215; section 1 of House Bill No. 1214, chapter 214; section 1 of House Bill No. 1202, chapter 213; and section 1 of House Bill No. 1396, chapter 216.

CHAPTER 213

HOUSE BILL NO. 1202

(Representatives Brown, Carlson, Hanson, Kempenich)
(Senators O'Connell, Traynor)

LANDOWNER PREFERENCE ELK LICENSES

AN ACT to amend and reenact subsection 7 of section 20.1-03-11 and section 20.1-08-04.6 of the North Dakota Century Code, relating to landowner preference licenses to hunt elk and the governor's proclamation concerning the hunting of elk; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

² **SECTION 1. AMENDMENT.** Subsection 7 of section 20.1-03-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. A resident who has executed a lease for at least one hundred sixty acres [64.75 hectares] of land and who actively farms or ranches that land or a resident who holds title to at least one hundred sixty acres [64.75 hectares] of land is eligible to apply for a license to hunt elk upon filing an affidavit describing that land and payment of the fee requirement for a resident big game license. The land must be within a unit open for the hunting of elk. The license must include a legal description of the eligible land described in the affidavit and may be used to hunt elk within the district or unit in which the land described in the affidavit is located. Upon request a lessee shall provide proof that the land described in the affidavit is leased for agricultural purposes. A resident who is eligible for a license under this subsection may transfer that eligibility for the license to a spouse or legal dependent residing customarily with the resident, but no more than one license may be issued under this subsection for any qualifying land. A resident transferring eligibility under this subsection is not eligible to apply for a license to hunt elk in future years but is eligible to participate in the rocky mountain elk foundation raffle under section 20.1-08-04.6. If not otherwise specified in an agricultural lease, the landowner is entitled to receive the license. The governor's proclamation may restrict the districts or units for which preferential licenses may be issued under this subsection. However, the governor shall give primary consideration to allowing preferential licenses under this subsection to be issued to persons owning or leasing land in the following areas: that portion of township one hundred forty-seven north, range ninety-five west which is north and west of state highway ~~twenty-two~~ 22; township one hundred forty-six north, range ninety-six west; township one hundred forty-seven north, range ninety-six west; township one hundred forty-eight north,

² Section 20.1-03-11 was also amended by section 1 of Senate Bill No. 2137, chapter 215; section 1 of House Bill No. 1172, chapter 212; section 1 of House Bill No. 1214, chapter 214; and section 1 of House Bill No. 1396, chapter 216.

range ninety-six west; township one hundred forty-six north, range ninety-seven west; township one hundred forty-seven north, range ninety-seven west; township one hundred forty-eight north, range ninety-seven west of the fifth principal meridian, in Dunn County; the west one-half of township one hundred forty-nine north, range ninety-five west; township one hundred forty-nine north, range ninety-six west, and township one hundred forty-nine north, range ninety-seven west of the fifth principal meridian, in McKenzie County; and other areas within a district or unit open for hunting of elk as prescribed in the governor's proclamation. The number of licenses issued under this subsection for each designated district or unit for hunting elk may not exceed fifteen percent of the total licenses prescribed in the governor's proclamation for each district or unit. If the number of applications for licenses to be issued under this subsection in a district or unit exceeds the maximum number of such licenses allocated to that district or unit, the licenses to be issued must be issued by lottery as prescribed in the governor's proclamation. A person who receives a license under this subsection is not eligible to apply for a license to hunt elk in future years but is eligible to participate in the rocky mountain elk foundation raffle under section 20.1-08-04.6. Notwithstanding this subsection, if a person other than the transferee of license eligibility is unsuccessful in harvesting an elk under this subsection, that person may return the unused license to the department and is eligible to apply for, but not transfer, a one-time additional license to hunt elk in future years. A person who receives a second license under this subsection is not eligible to participate in the rocky mountain elk foundation raffle under section 20.1-08-04.6. Licenses to hunt elk may not be issued under this subsection when the total number of licenses prescribed in the governor's proclamation is less than twenty. If a person receives a license under this subsection, the person's spouse, children, and parents living with the person are not eligible to receive a license under this subsection for the district or unit in which the land described in the affidavit is located, unless the person has sold or otherwise transferred the person's rights to the land described in the affidavit. The director may issue special elk depredation management licenses to landowners in designated areas around Theodore Roosevelt national park upon payment of the fee requirement for a resident big game license. The provisions of this section governing the number of licenses issued for each designated district or unit for hunting elk do not apply to special elk depredation management licenses and a person who receives such a license under this subsection is eligible to apply for a license to hunt elk in future years and is eligible to participate in the rocky mountain elk foundation raffle under section 20.1-08-04.6.

SECTION 2. AMENDMENT. Section 20.1-08-04.6 of the North Dakota Century Code is amended and reenacted as follows:

20.1-08-04.6. Governor's proclamation concerning the hunting of elk - Rocky mountain elk foundation raffle. The governor may by proclamation provide for a season to hunt elk in a manner, number, places, and times as the governor prescribes. Licenses to hunt elk must be issued by lottery, except as provided under subsection 7 of section 20.1-03-11, with only residents eligible to apply; however, the governor may by proclamation make available to the rocky mountain elk foundation a license to hunt elk in a manner, places, and times as the governor prescribes. The rocky mountain elk foundation shall hold a raffle under rules adopted by the commissioner with only residents eligible to participate. No more than ten percent

of the gross proceeds of the raffle may be used to promote the raffle and all net proceeds must be used for elk management and related projects in North Dakota as described under rocky mountain elk foundation policies and objectives. The rocky mountain elk foundation shall submit reports concerning the raffle as the commissioner requires. A Except for landowners who receive special elk depredation management licenses issued to landowners of subsection 7 of section 20.1-03-11 and persons who receive a special elk depredation management license issued by lottery under this section, a person may only receive one license to hunt elk issued by lottery and one nontransferable license to hunt elk through the rocky mountain elk foundation raffle in a lifetime.

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

Approved March 23, 1997

Filed March 24, 1997

CHAPTER 214

HOUSE BILL NO. 1214

(Representatives Wilkie, Olson, Hanson)
(Senators Kelsh, O'Connell, Sand)

LANDOWNER PREFERENCE MOOSE LICENSES

AN ACT to amend and reenact subsection 8 of section 20.1-03-11 of the North Dakota Century Code, relating to landowner preference moose hunting licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³ **SECTION 1. AMENDMENT.** Subsection 8 of section 20.1-03-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. A resident who has executed a lease for at least one hundred sixty acres [64.75 hectares] of land and who actively farms or ranches that land or a resident who holds title to at least one hundred sixty acres [64.75 hectares] of land is eligible to apply for a license to hunt moose without charge upon filing an affidavit describing that land. The land must be within a unit open for the hunting of moose. The license must include a legal description of the eligible land described in the affidavit and may be used to hunt moose only upon that land. Upon request a lessee shall provide proof that the land described in the affidavit is leased for agricultural purposes. A resident who is eligible for a license under this subsection may transfer that eligibility for the license to a spouse or a legal dependent residing customarily with the resident, but no more than one license may be issued under this subsection for any qualifying land. A resident transferring eligibility under this subsection is not eligible to apply for a license to hunt moose in future years but is eligible to participate in the North Dakota game warden association raffle under section 20.1-08-04.2. If not otherwise specified in an agricultural lease, the landowner is entitled to receive the license. The number of licenses issued under this subsection for a district or unit may not exceed fifteen percent of the total licenses prescribed in the governor's proclamation for that district or unit. If the number of eligible persons who apply for a license under this subsection exceeds the number of licenses available under this subsection, the licenses must be issued by lottery as prescribed in the governor's proclamation. A person who receives a license under this subsection and who is successful in harvesting a moose is not eligible to apply for a license to hunt moose in future years but is eligible to participate in the North Dakota game warden association raffle under section 20.1-08-04.2. Notwithstanding this subsection, if a person other than the transferee of license eligibility is unsuccessful in harvesting a

³ Section 20.1-03-11 was also amended by section 1 of Senate Bill No. 2137, chapter 215; section 1 of House Bill No. 1172, chapter 212; section 1 of House Bill No. 1202, chapter 213; and section 1 of House Bill No. 1396, chapter 216.

moose under this subsection, that person may return the unused license to the department and is eligible to apply for, but not transfer an additional license to hunt moose in future years. A person who receives a second license under this subsection is not eligible to participate in the North Dakota game warden association raffle under section 20.1-08-04.2. If a person receives a license under this subsection, the person's spouse, children, and parents living with the person are not eligible to receive a license under this subsection for the district or unit in which the land described in the affidavit is located, unless the person has sold or otherwise transferred the person's rights to the land described in the affidavit. The governor's proclamation may restrict the area of land within a unit open for the hunting of moose for which a preferential license is issued under this subsection. If the proclamation restricts the area for issuance of preferential licenses, an applicant must own or lease land within the restricted area to be eligible to apply for a license to hunt moose upon payment of the fee required for a resident big game license. The license may be used to hunt moose within the entire unit in which the land described in the affidavit is located. A successful applicant from a restricted area may not return an unused license to regain eligibility for a license to hunt moose in future years.

Approved March 23, 1997
Filed March 24, 1997

CHAPTER 215

SENATE BILL NO. 2137

(Senators Christmann, Heitkamp, Klein)
(Representatives Brown, Gulleon, Murphy)

LANDOWNER DEER HUNTING

AN ACT to create and enact a new subsection to section 20.1-03-11 of the North Dakota Century Code, relating to deer hunting by landowners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁴ **SECTION 1.** A new subsection to section 20.1-03-11 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

A person who holds a valid license to hunt deer may hunt the same species and sex of deer, for which that person's license is valid, on land in an adjoining unit for which that person would be eligible for a gratis deer license under subsection 3 of this section.

Approved March 21, 1997
Filed March 21, 1997

⁴ Section 20.1-03-11 was also amended by section 1 of House Bill No. 1172, chapter 212; section 1 of House Bill No. 1214, chapter 214; section 1 of House Bill No. 1202, chapter 213; and section 1 of House Bill No. 1396, chapter 216.

CHAPTER 216

HOUSE BILL NO. 1396 (Representative Carlson)

NONRESIDENT MULE DEER HUNTING

AN ACT to create and enact a new subsection to section 20.1-03-11 of the North Dakota Century Code, relating to the hunting of mule deer by nonresidents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁵ **SECTION 1.** A new subsection to section 20.1-03-11 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

Fifteen percent of the total mule deer licenses and permits to hunt mule deer made available in the immediately preceding year for the regular gun season must be made available to nonresidents to hunt any deer with bow and arrow.

Approved April 3, 1997
Filed April 3, 1997

⁵ Section 20.1-03-11 was also amended by section 1 of Senate Bill No. 2137, chapter 215; section 1 of House Bill No. 1172, chapter 212; section 1 of House Bill No. 1214, chapter 214; and section 1 of House Bill No. 1202, chapter 213.

CHAPTER 217

HOUSE BILL NO. 1302

(Representative Carlson)

NONRESIDENT LICENSE VENDORS PROHIBITED

AN ACT to amend and reenact section 20.1-03-17 of the North Dakota Century Code, relating to appointment of agents and use of out-of-state vendors by county auditors to sell game and fish licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-03-17 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-17. Issuance of licenses - Who to issue - County auditor may appoint agents to receive service fees - Disposition of proceeds. All hunting, fur-bearer, fishing, and taxidermists' licenses must be issued by county auditors, the director, deputy director, and bonded game wardens. The deputy director and each bonded game warden shall send the director all license fees. For each license the county auditor issues, the county auditor shall collect the authorized charges and record them in the county auditor's record of cash received. The county auditor shall retain, as compensation, twenty-five cents for the issuance of each of the first one thousand resident hunting, fishing, or fur-bearer licenses issued each year and fifteen cents for the issuance of each resident hunting, fishing, or fur-bearer license issued in excess of the first one thousand licenses issued each year; one dollar for the issuance of each nonresident hunting or fur-bearer license; twenty-five cents for the issuance of each nonresident fishing license; and ten cents for the issuance of each nonresident general game license.

The county auditor may appoint agents to distribute hunting and fishing licenses or stamps. However, a county auditor may not provide hunting licenses to agents located outside this state. The county auditor may require agents to show evidence of adequate financial security before the agents are appointed. Adequate financial security may be evidenced by a letter of credit, cash deposit, or bond. Agents may be bonded through the state bonding fund. The agents may charge purchasers a service fee of fifty cents for each license. Service fees may be retained by the agent. The remainder of the license fees must be returned to the county auditor, for deposit with the county treasurer, at least once each month, and not later than three days after the close of the month. Notwithstanding section 26.1-21-11, if a claim against the state bonding fund is not filed within sixty days of the expiration of the reporting period provided in this section, the claim is waived. Deposits are to be accompanied by a report showing the amounts received from the sale of each type of license, the amount retained, and the net amounts deposited. The county treasurer shall credit the fees so deposited to a separate account and shall hold the fees, subject to warrant for payment thereof drawn by the county auditor in favor of the director. The director shall deposit all license or stamp fees received with the state treasurer to be credited to the game and fish fund.

Approved March 25, 1997
Filed March 26, 1997

CHAPTER 218**HOUSE BILL NO. 1094**
(Representatives Hanson, Olson)**GAME WARDEN ASSOCIATION MOOSE RAFFLE
LICENSES**

AN ACT to amend and reenact section 20.1-08-04.2 of the North Dakota Century Code, relating to the North Dakota game warden association raffle.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-08-04.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-08-04.2. Governor's proclamation concerning the hunting of moose - North Dakota game warden association raffle. The governor may by proclamation provide for a season to hunt moose in a manner, number, places, and times as the governor prescribes. Licenses to hunt moose must be issued by lottery, except as provided under subsection 8 of section 20.1-03-11, with only residents eligible to apply; however, the governor may by proclamation make available to the North Dakota game warden association one license per year to hunt moose in a manner, places, and times as the governor prescribes. The North Dakota game warden association shall hold a raffle under rules adopted by the director with residents and nonresidents eligible to participate. The person who receives the license from the raffle may not transfer the license. No more than ten percent of the gross proceeds of the raffle may be used to promote the raffle. Fifteen percent of all net proceeds must be remitted to the department and used for moose management and related projects in this state. All remaining net proceeds must be used for construction and maintenance of the North American wildlife enforcement officers association game warden museum located at the international peace garden. The governor may not make more than a total of ~~five~~ ten licenses available to the North Dakota game warden association under this section. A person may only receive one license to hunt moose issued by lottery and one license to hunt moose through the North Dakota game warden association raffle in a lifetime.

Approved March 7, 1997
Filed March 10, 1997

CHAPTER 219

HOUSE BILL NO. 1196

(Representatives Nichols, Olson, Wilkie)
(Senators Cook, Mutzenberger)

MUZZLELOADING DEER HUNTING LICENSES

AN ACT to amend and reenact section 20.1-08-04.5 of the North Dakota Century Code, relating to hunting deer with muzzleloading firearms.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-08-04.5 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-08-04.5. Governor's proclamation concerning the hunting of deer with muzzleloading firearms. The governor shall by proclamation provide for a one-week season following the regular deer hunting season to hunt deer with muzzleloading firearms in the manner, number, places, and times as the governor prescribes. Licenses to hunt deer with muzzleloading firearms must be issued by the director by lottery as prescribed by the director; ~~with a maximum of seven hundred licenses issued each season.~~ The director shall issue two percent of the total white-tailed deer gun licenses available each year to hunters with muzzleloading firearms. Of the two percent, one-half of the licenses issued may be antlered.

Approved March 23, 1997

Filed March 24, 1997

CHAPTER 220

HOUSE BILL NO. 1405

(Representatives Svedjan, Carlson, Henegar)
(Senators St. Aubyn, Traynor)

PRIVATE SHOOTING PRESERVE OPERATION

AN ACT to amend and reenact sections 20.1-12-05, 20.1-12-06, and 20.1-12-07 of the North Dakota Century Code, relating to the operation of private shooting preserves; and to repeal section 20.1-12-06.1 of the North Dakota Century Code, relating to harvest of game birds on private shooting preserves.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-12-05 of the North Dakota Century Code is amended and reenacted as follows:

20.1-12-05. Operation of shooting preserve - Season - Search of premises permitted. Any guest of a shooting preserve operator, ~~in possession of a general game license,~~ may harvest any game bird within the defined limits of the shooting preserve, subject to this chapter. The shooting preserve operator may establish that person's own restrictions on the age, sex, and number of each game bird that may be taken by each guest, and the fee to be paid by each guest. The exterior boundaries of each shooting preserve must be clearly defined and posted with signs erected around the extremity at intervals of three hundred feet [91.44 meters] or less. Each shooting preserve operator and that person's guest shall comply with and be subject to chapter 20.1-01. Shooting preserve operators may restrict or set the hours during which game birds may be hunted, subject to gubernatorial proclamation. The season for shooting preserves may be all or part of the ~~seven-month~~ nine-month period beginning ~~September~~ August first and ending ~~March thirty-first~~ April thirtieth of the following year. All permits must be issued upon the express condition that the permittee agrees that any law enforcement officer or any representative of the director may enter and search the premises or any part thereof at any reasonable time to ensure compliance with state laws and the director's rules.

SECTION 2. AMENDMENT. Section 20.1-12-06 of the North Dakota Century Code is amended and reenacted as follows:

20.1-12-06. Game birds to be tagged. Each shooting preserve operator shall tag all game birds harvested by guests before the birds are consumed or removed from the shooting preserve premises. ~~The tags must distinguish between birds released by the shooting preserve operator, and wild birds. Tags must be numbered consecutively, dated by year of issuance, and must be self-sealing.~~ The director shall provide tags to shooting preserve operators, at nominal cost to them. Once affixed, tags must remain attached until the game birds are prepared for consumption.

SECTION 3. AMENDMENT. Section 20.1-12-07 of the North Dakota Century Code is amended and reenacted as follows:

20.1-12-07. Guest register and records to be maintained. Each shooting preserve operator shall maintain a guest register listing the guest's name and address, ~~the number of that person's North Dakota general game license,~~ the date on which the guest hunted, the number of game birds and species taken ~~and their tag~~

numbers, with wild birds and operator released birds listed separately. A record must also be maintained by each shooting preserve operator of the source of game released in the operator's preserve, the date of release, and the number and kind of game bird or species released. The records required by this section must be open for inspection by the director, the director's representative, or any law enforcement officer at any reasonable time.

SECTION 4. REPEAL. Section 20.1-12-06.1 of the North Dakota Century Code is repealed.

Approved March 25, 1997
Filed March 25, 1997

GOVERNMENTAL FINANCE

CHAPTER 221

SENATE BILL NO. 2121

(Political Subdivisions Committee)

(At the request of the North Dakota Municipal Bond Bank)

POLITICAL SUBDIVISION CERTIFICATES OF INDEBTEDNESS

AN ACT to create and enact two new sections to chapter 21-02 of the North Dakota Century Code, relating to the validity and exemption from taxation of certificates of indebtedness; to amend and reenact sections 21-02-01, 21-02-02, 21-02-03, 21-02-05, 21-02-06, 21-02-07, 21-02-08, and 21-02-11 of the North Dakota Century Code, relating to certificates of indebtedness; to repeal sections 21-02-04, 21-02-09, 21-02-10, 21-02-12, and 21-02-13 of the North Dakota Century Code, relating to certificates of indebtedness; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 21-02-01 of the North Dakota Century Code is amended and reenacted as follows:

21-02-01. ~~Uncollected taxes - Definition~~ Definitions. ~~The term "uncollected taxes" when used in this chapter, unless the context thereof clearly requires otherwise, means taxes from which revenue has not come into the public treasury either by payment or by tax sale. In this chapter unless the context or subject matter otherwise requires:~~

1. "Political subdivision" means a local governmental unit created by statute or by the Constitution of North Dakota for local governmental or other public purposes.
2. "Revenues" means any of the following:
 - a. Uncollected taxes.
 - b. Amounts to be received from a distribution of federal moneys, including currently existing bureau of Indian affairs contracts.
 - c. Amounts to be received from a distribution of moneys pursuant to a state appropriation or a state statutory or constitutional provision.
3. "Uncollected taxes" means taxes for the year during which a certificate of indebtedness is issued and the preceding four years that have been levied but from which moneys have not come into the public treasury either by payment or by tax sale, exclusive of tax levies dedicated to the payment of principal of and interest on outstanding evidences of indebtedness.

SECTION 2. AMENDMENT. Section 21-02-02 of the North Dakota Century Code is amended and reenacted as follows:

21-02-02. Certificates of indebtedness - By whom issued - Term - Interest - Tax when deemed levied General obligation. ~~Counties, cities, townships, school districts, park districts, irrigation districts, water resource districts, Garrison Diversion Conservancy District, county park districts, or joint park districts shall have power to borrow in anticipation of revenues to be derived from proceeds to be received under currently existing contracts with the bureau of Indian affairs and from taxes already levied. The aggregate amount of such borrowings at any time may not exceed the amount of uncollected taxes which have been levied during the year in which the borrowing is made, plus uncollected taxes remaining upon the tax lists of the four preceding years, exclusive of levies for the purpose of retiring bond issues and the interest thereon, plus funds to be received under currently existing bureau of Indian affairs contracts. For the purpose of borrowing, all such taxing districts may issue certificates of indebtedness. Political subdivisions may borrow against revenues through the issuance of certificates of indebtedness. A certificate of indebtedness consists of an agreement on the part of the taxing district a political subdivision to pay a stated sum on a specified date, or on or before a specified date not more than twenty-four months in the future, together with interest thereon at a rate or rates resulting in an average annual net interest cost not exceeding twelve percent per annum if they are if the certificate is sold privately, which may be made payable semiannually. There is no interest rate ceiling on a certificate sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The certificate must be signed on behalf of the district political subdivision by its president or chairman, or equivalent officer, and also by its auditor, business manager or secretary, or equivalent officer, and must be payable out of funds derived from uncollected taxes levied for the current tax year and four previous years which have not been set aside for the payment of other certificates of indebtedness pursuant to sections 21-02-07, 21-02-08, and 21-02-09 and from funds received under bureau of Indian affairs contracts currently existing from revenues. However, a A certificate of indebtedness must be the issued wholly or in part against revenues that consist of levied and uncollected taxes is a general obligation of the issuing taxing district political subdivision to the extent of the levied and uncollected taxes.~~

SECTION 3. AMENDMENT. Section 21-02-03 of the North Dakota Century Code is amended and reenacted as follows:

21-02-03. Certificate of county auditor - ~~Certificate of indebtedness - When incontestable.~~ A tax ~~must be is~~ deemed to have been levied when it has been voted by the tax levying board and certified to the county auditor. Each certificate of indebtedness issued wholly or in part against revenues that consist of levied and uncollected taxes must bear the certificate of the county auditor to the effect that it, together with all other outstanding certificates issued wholly or in part against revenues that consist of levied and uncollected taxes, is within the amount of uncollected taxes ~~which that~~ have been levied lawfully in the then present year, plus uncollected taxes of the four preceding years, plus amounts to be received under currently existing bureau of Indian affairs contracts. Such certificate of indebtedness possesses no validity unless it bears such certificate of the county auditor. The county auditor shall make such certificate according to the facts. When so executed with the prescribed certificate signed by the county auditor, a certificate of indebtedness is fully negotiable and is incontestable, except upon the ground of fraud on the part of the holder or original payee or connivance between the holder or the original payee and an officer or officers of the taxing district concerned. In the hands of a holder in due course, the execution of a certificate of indebtedness by the

proper officials is conclusive evidence that the issuance thereof was duly authorized by the governing board of the taxing district. A county auditor who willfully signs a false certificate upon a certificate of indebtedness is guilty of a class A misdemeanor.

SECTION 4. AMENDMENT. Section 21-02-05 of the North Dakota Century Code is amended and reenacted as follows:

21-02-05. Recording Record of certificates of indebtedness issued against levied and uncollected taxes. ~~The county auditor, at the time of attaching the certification to any certificate of indebtedness, shall record such certificate of indebtedness in record space set aside for the recording thereof. Such record must contain~~ shall keep a record in which must be entered, as to each certificate of indebtedness issued by a political subdivision and certified to by the county auditor as provided in section 21-02-03, the same information as required for the recording of bonds in section 21-03-23. Upon presentment and payment in full by a political subdivision of a certificate of indebtedness which has been recorded by the county auditor pursuant to this section, the political subdivision must provide the county auditor with a certificate of redemption for the certificate, which must be recorded by the county auditor.

SECTION 5. AMENDMENT. Section 21-02-06 of the North Dakota Century Code is amended and reenacted as follows:

21-02-06. Certifying amount of uncollected taxes and moneys under bureau of Indian affairs contracts. ~~The county auditor at any time, upon request of the officers of any taxing district a political subdivision, shall certify to them the amount of uncollected taxes remaining upon the tax lists to the credit of such district and the amount still owed to the county under currently existing bureau of Indian affairs contracts the political subdivision on the last day of the preceding month, and annually shall certify such information to the clerk of each township on February fifteenth, to the auditor of each city on September tenth, and to the business manager of each school district on June tenth. The county auditor also shall certify to the clerk, auditor, business manager, or secretary, or equivalent officer, of each such taxing district monthly political subdivision, at the time of making the monthly apportionment of funds, the amount of cash collections apportioned for that month to such taxing district the political subdivision and the amount derived from levies of each tax year.~~

SECTION 6. AMENDMENT. Section 21-02-07 of the North Dakota Century Code is amended and reenacted as follows:

21-02-07. Taxes, revenues, and bureau of Indian affairs contract moneys constitute special fund to pay certificates Authorizing resolution - Sinking fund. ~~When any taxing district has issued certificates of indebtedness pursuant to the terms of this chapter, the taxing district shall cause the county auditor to set aside all money from bureau of Indian affairs contracts, a distribution of revenue pursuant to a state appropriation or statutory or constitutional provision, or taxes collected from levies for the respective years against which such certificates have been issued, except those for sinking and interest funds thereafter accruing to the credit of the district. The money must be held by the county treasurer in a special fund to be used only for the purpose of retiring the certificates of indebtedness and paying interest thereon until sufficient funds have been accumulated from the bureau of Indian affairs contract moneys, a distribution of revenue pursuant to a state appropriation or statutory or constitutional provision, or collection of levies of any year or years against which certificates of indebtedness have been issued to retire the certificates of that year. When a political subdivision issues a certificate of indebtedness under this chapter,~~

the political subdivision, by resolution authorizing the issuance of the certificate of indebtedness, shall establish a sinking fund for the retirement of the certificate of indebtedness, including interest, on its due date. The resolution must also provide for the regular accumulation of money in the sinking fund from the revenues pledged to the payment of the certificate of indebtedness. Upon the accumulation of sufficient money in the sinking fund to pay the principal and interest which will be due and owing on the maturity date of the certificate of indebtedness, no additional revenues may be credited to the sinking fund.

SECTION 7. AMENDMENT. Section 21-02-08 of the North Dakota Century Code is amended and reenacted as follows:

21-02-08. Percentage of current taxes used to pay delinquent certificates of indebtedness. ~~If sufficient funds are not collected under currently existing bureau of Indian affairs contracts, a distribution of revenue pursuant to a state appropriation or statutory or constitutional provision, or from levies against which certificates of indebtedness are issued to retire such certificates, both principal and interest, to retire outstanding certificates of indebtedness issued wholly or in part against revenues that consist of uncollected taxes within two months after their due date, there must be set aside monthly from current tax collections, exclusive of tax levies dedicated to the payment of principal of and interest on outstanding evidences of indebtedness, not less than ten percent of the amount of such the collections until such the past due certificates have been paid. Within one month after the due date of a certificate of indebtedness, the governing board of the issuing taxing district shall transmit to the county auditor its duly authenticated resolution directing the percentage of tax collections which must be retained by the county treasurer to retire such certificate within the foregoing limitations. If such resolution is not received within two months after the due date of such certificate, the county auditor shall retain thirty percent of such collections.~~

SECTION 8. AMENDMENT. Section 21-02-11 of the North Dakota Century Code is amended and reenacted as follows:

21-02-11. Advertising for bids - When required - Procedure similar to bond sales. If the governing board of ~~any taxing district~~ a political subdivision determines to borrow upon certificates of indebtedness, it shall follow the procedure and is subject to the penalties prescribed in the provisions relating to the sale of bonds in chapter 21-03. Certificates of indebtedness need not be advertised for bids:

1. If they are sold to the state board of university and school lands, the Bank of North Dakota, the North Dakota municipal bond bank, or in case other trust funds administered by public officials are invested in them; or
2. If they do not exceed the total sum of one hundred thousand dollars.

SECTION 9. Two new sections to chapter 21-02 of the North Dakota Century Code are created and enacted as follows:

Presumption of validity. After issuance by a political subdivision, a certificate of indebtedness that recites that it is issued under this chapter is conclusively presumed to be fully authorized and issued under the laws of the state, and any person or governmental unit is estopped from questioning its authorization, sale, execution, issuance, or delivery by the political subdivision.

Certificate of indebtedness exempt from state taxation - Review for exemption from federal taxation. Payments of the principal of and interest on a certificate of indebtedness issued under this chapter are exempt from all taxes, except inheritance, estate, and transfer taxes, imposed by this state, any county or city, or any other political subdivision. However, a political subdivision shall review, or cause to be reviewed, federal tax laws and regulations to determine the federal tax exempt status of interest payments on a certificate of indebtedness prior to the issuance and sale of the certificate on a purported federally tax exempt basis.

SECTION 10. REPEAL. Sections 21-02-04, 21-02-09, and 21-02-12 of the North Dakota Century Code and sections 21-02-10 and 21-02-13 of the 1995 Supplement to the North Dakota Century Code are repealed.

Approved March 21, 1997
Filed March 21, 1997

CHAPTER 222

HOUSE BILL NO. 1294

(Representatives Huether, Grumbo, Kempenich)
(Senators Heitkamp, LaFountain, Urlacher)

FEDERAL AID BRIDGE PROJECT BONDING

AN ACT to amend and reenact subsection 3 of section 21-03-07 of the North Dakota Century Code, relating to bonding for federal aid bridge projects.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 21-03-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The governing body of any municipality may issue bonds of the municipality for the purpose of providing funds to meet its share of the cost of any federal-aid highway project undertaken under an agreement entered into by the governing body with the United States government, the director of the department of transportation, the board of county commissioners, or any of them, including; ~~but without limitation,~~ the cost of any construction, improvement, financing, planning, and acquisition of right of way of a bridge eligible for federal matching funds, federal-aid highway routed through the municipality and of any bridges and controlled access facilities thereon and any necessary additional width or capacity of the bridge or roadway thereof greater than that required for federal or state bridge or highway purposes, and of any necessary relaying of utility mains and conduits, curbs and gutters, and the installation of utility service connections and streetlights; ~~provided, that the.~~ The portion of the total cost of ~~such the~~ project to be paid by the municipality under ~~such the~~ agreement, including all items of cost incurred directly by the municipality and all amounts to be paid by it for work done or contracted for by other parties to the agreement, may not exceed a sum equal to thirty percent of the total cost, including engineering and other incidental costs, of all construction and reconstruction work to be done plus fifty percent of the total cost of all right of way to be acquired in connection therewith. The initial resolution authorizing issuance of bonds under this subsection must be published in the official newspaper of the municipality. Within sixty days after publication, an owner of taxable property within the municipality may file with the auditor or chief fiscal officer of the municipality a written protest against adoption of the resolution. A protest must describe the property that is the subject of the protest. If the governing body finds protests have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property in the municipality, as most recently finally equalized, all further proceedings under the initial resolution are barred. Nothing herein may be deemed to prevent any municipality from appropriating funds for or financing out of taxes, special assessments, or utility revenues any work incidental to any such project, in the manner and to the extent otherwise permitted

by law, and the cost of any work so financed may not be included in computing the portion of the project cost payable by the municipality, within the meaning of this subsection, unless ~~such~~ the work is actually called for by the agreement between the municipality and the other governmental agencies involved.

Approved March 23, 1997

Filed March 24, 1997

CHAPTER 223

HOUSE BILL NO. 1380

(Representatives Grosz, Belter, Clark)
(Senators Andrist, Kinnoin, Tomac)

POLITICAL SUBDIVISION BOND LEVIES

AN ACT to amend and reenact sections 21-03-15 and 21-03-42 of the North Dakota Century Code, relating to payment of the principal and interest on bonds issued by political subdivisions and termination of tax levies; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 21-03-15 of the North Dakota Century Code is amended and reenacted as follows:

21-03-15. Direct, annual, irrepealable tax. The governing body of every municipality issuing bonds under the authority of this chapter, before the delivery thereof, shall levy by recorded resolution or ordinance a direct, annual tax which, together with any other moneys provided by, or sources of revenue authorized by, the legislative assembly, shall be sufficient in amount to pay, and for the express purpose of paying, the interest on such bonds as it falls due, and also to pay and discharge the principal thereof at maturity. The municipality shall be and continue without power to repeal such levy or levies or to obstruct the collection of any such tax until such payments have been made or provided for, except that if the governing body in any year makes an irrevocable appropriation to the sinking fund of moneys actually on hand, or if there is on hand in the sinking fund an ~~excess~~ amount that would be sufficient to retire the bonds, the governing body ~~may~~ shall cause its recording officer to certify the fact and amount to the county auditor with the direction that the county auditor should reduce by the amount so certified the amount otherwise to be included in the tax rolls next thereafter prepared. A copy of such resolution or ordinance must be certified to and filed with the county auditor, and after the issuance of such bonds, any such tax on property from year to year must be carried into the tax roll of the municipality and collected as other property taxes are collected. No further annual levy for that purpose is necessary. The governing body may, in its discretion and in anticipation of the sale of bonds, at any time after the issuance of bonds has been authorized by the electors or by resolution of the governing body where no election is required, levy and certify to the county auditor for collection a portion of the tax herein required, which must be credited against the amount otherwise required to be levied after the bonds have been sold. Any other tax or source of revenue authorized by the legislative assembly for such purposes and imposed or pledged by the municipality for those purposes is likewise irrepealable and subject to the same conditions and limitations as any taxes levied on property for the same purposes. Any annual or periodic amounts provided for the municipality issuing such bonds by the legislative assembly out of state funds for paying the interest and principal of such bonds constitute an irrepealable and continuing appropriation until the liability for all interest and principal payments of the bonds have been satisfied. When insufficient funds are available to pay the matured bonds, the county auditor shall notify the governing body of such municipality of such deficiency and the governing body thereupon may levy a direct tax on the taxable property to pay said deficiency and interest thereon. If the governing body of the issuing municipality no longer exists, the county auditor shall

levy a direct tax against the taxable property in the original issuing municipality to pay said deficiency and the interest thereon. The manner of levy, certification, and collection of said tax must be the same as provided by this section for the levy, certification, and collection of taxes by this section. When such bonds are further sustained by revenue of a revenue-producing utility, industry, or enterprise, said resolution or ordinance may provide that the tax to be levied and assessed may be reduced by such amount and under such conditions as must be determined in said resolution or ordinance so long as adequate provision is always made for the payment of such bonds and interest thereon.

SECTION 2. AMENDMENT. Section 21-03-42 of the North Dakota Century Code is amended and reenacted as follows:

21-03-42. Sinking fund - Sources and uses. The sinking fund must be disbursed by the county treasurer or treasurer of the municipality, as the case may be, upon the directions therefor by resolution of the governing body of the municipality issuing such bonds. As such bonds mature, the county treasurer, upon warrant drawn upon ~~him~~ the county treasurer by the county auditor, shall apply such sinking fund in retirement thereof, and also in payment of the interest thereon as it becomes payable. The county auditor shall draw such warrants so as to pay the interest and retire the bonds at as early a date as possible. If the bonds are retired or if the balance in the sinking fund is sufficient to retire the bonds, the county auditor shall notify the governing body of the municipality of its obligation under section 21-03-15 to terminate the levy for payment of principal and interest on the bonds. The county treasurer or treasurer of the municipality may not disburse any of such fund contrary to the provisions of this chapter, even though so directed by such governing body. The county treasurer or treasurer of the municipality may disburse such fund for the purpose of paying the principal and interest, or either, of the bonds for which such fund was created without any authorization therefor by the governing body. The sinking fund of each bond issue must be kept separate and must be designated by a name indicative of the issue of bonds on account of which it was created. The sources of such fund must be:

1. All moneys accruing to the borrowed money fund prescribed by section 21-03-38 which at any stage are not needed for the purpose for which the money was borrowed, and any moneys becoming applicable to the sinking fund must be transmitted by the treasurer of the municipality to the county treasurer, in case such municipality has a population of four thousand or less, upon direction therefor by the governing body of the municipality.
2. All moneys raised by taxation and received from other sources pursuant to section 21-03-15 for the purpose of paying said bond.
3. Moneys derived from licenses or other sources, the expenditure of which is not otherwise provided for by law, as the governing body may elect to place in the sinking fund, and which must be paid over to the county treasurer for deposit in such sinking fund by the treasurer of the municipality, in case such municipality has a population of four thousand or less, upon a resolution directing such payment by the governing body.
4. The premium, if any, for which the bonds have been sold over and above the par value and accrued interest.

SECTION 3. EFFECTIVE DATE. This Act is effective for bond issues outstanding after July 31, 1997.

Approved March 23, 1997

Filed March 24, 1997

CHAPTER 224

SENATE BILL NO. 2157

(Senator Tomac)

PUBLIC DEPOSIT SECURITY PLEDGES

AN ACT to amend and reenact section 21-04-09 of the North Dakota Century Code, relating to pledges to secure public deposits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 21-04-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

21-04-09. Pledge of security in place of depository bond. The board of any public corporation may accept from any financial institution, as security for repayment of deposits, a pledge of securities in lieu of a personal or surety bond. When securities are so pledged to the board of any public corporation, ~~such~~ the board shall require security in the amount of one hundred ten dollars for every one hundred dollars of public deposits. Securities ~~which~~ that are eligible for ~~such~~ the pledge are bills, notes, or bonds issued by the United States government, its agencies or instrumentalities, all bonds and notes guaranteed by the United States government, irrevocable standby letters of credit issued by federal home loan banks of a rating of AA or better by Moody's Investors Service, Inc. or Standard & Poor's Corporation, federal land bank bonds, bonds, notes, warrants, certificates of indebtedness, insured certificates of deposit, shares of investment companies registered under the Investment Companies Act of 1940, letters of credit issued by the Bank of North Dakota, and all other forms of securities issued by the state of North Dakota, its boards, agencies, or instrumentalities, or by any county, city, township, school district, park district, or other political subdivision of the state of North Dakota, whether payable from special revenues or supported by the full faith and credit of the issuing body, and bonds issued by any other state of the United States or such other securities approved by the banking board. ~~Such~~ The securities and securities sold under agreements to repurchase as described in section 21-06-07 must be delivered to and held for safekeeping by any financial institution, other than the depository, which the depository and the public corporation may agree upon. Whenever any ~~such~~ securities are so deposited for safekeeping with any custodian, ~~such~~ the custodian shall issue a receipt therefor jointly to the depository and the public corporation.

Any financial institution pledging ~~such~~ securities, at any time it deems it advisable or desirable, and without the consent of the board of the public corporation, may substitute other eligible securities for all or any part of the securities ~~so~~ pledged. The securities ~~so~~ substituted must, at the time of ~~such~~ the substitution, have a market value at least equal to the market value of the securities released and delivered to the depository.

In the event of ~~such~~ the substitution the holder or custodian of the pledged securities shall, on the same day, forward by registered ~~or certified~~ mail to the public corporation and the depository financial institution a receipt specifically describing and identifying both the securities ~~so~~ substituted and those released and returned to the depository financial institution.

~~Any~~ A depository financial institution may fulfill the pledge of securities requirements of this section by maintaining a security pledge schedule that establishes the following:

1. The names of all public bodies maintaining deposits with the financial institution.
2. The amount of each deposit maintained by each public body.
3. The amount of federal deposit insurance corporation insurance applied to each account.
4. The net deposits exceeding federal deposit insurance corporation coverage for each account.
5. The amount of net deposit exceeding federal deposit insurance corporation deposit insurance multiplied by one hundred ten percent for each account.
6. The amount of securities needed to be pledged to fulfill the requirements of this section.
7. The total number of qualified securities pledged by the financial institution under the requirements of this section.

A financial institution is in compliance with this section as long as the security pledge schedule discloses the total qualified securities pledged in excess of the total pledges needed for a total amount of deposits maintained ~~with~~ by all the public bodies with the financial institution as verified by the custodian of the securities every three months and copies thereof are provided to the custodian of the securities and to each of the public corporations maintaining deposits with the financial institution.

No pledge of security or bond may be required for any funds deposited with a financial institution to the extent that ~~such~~ the deposits are insured by the federal deposit insurance corporation or ~~the federal savings and loan insurance corporation~~ or the national credit union ~~association~~ administration.

Approved April 1, 1997
Filed April 2, 1997

HEALTH AND SAFETY

CHAPTER 225

HOUSE BILL NO. 1349

(Representatives Price, Nicholas, Svedjan, Schmidt, Kerzman)
(Senator Krauter)

RABIES CONTROL AND ERADICATION

AN ACT to amend and reenact sections 23-01-18 and 23-01-19 of the North Dakota Century Code, relating to the control and eradication of rabies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-01-18 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-01-18. State department of health responsible for control of rabies. The state department of health is responsible for the prevention and control of rabies. The department shall place its primary emphasis on human exposure cases. The department may provide rabies vaccine for individuals whose net financial resources and income are insufficient to enable them to obtain the vaccine.

1. As used in this section:
 - a. "Bite" means any penetration of the skin by teeth.
 - b. "Confinement" means separation of the domestic dog or cat from humans, other than the owner, caretaker, or members of the owner's family or the caretaker's associates, and other animals by restriction of the animal in a house or building, fenced yard or pen, or through use of a leash or tether.
 - c. "Exposure to rabies" means any bite or nonbite by an animal as defined by the advisory committee on immunization practices.
2. Any animal, other than a domestic dog or cat, whether private property or not, which is not shown to have been currently vaccinated for rabies by a vaccine approved for use on that animal by the national association of state public health veterinarians, inc., and for which there is probable cause to believe has exposed a person, as defined by the advisory committee on immunization practices, must be seized and examined for rabies by the state public health laboratory upon order of the state health officer. The owner of an animal, if any, may not obtain an injunction or otherwise prevent the seizure and examination of the animal for rabies, but is entitled to money damages in the amount of the replacement value of the animal which the person legally owned and possessed if the state health officer had reliable evidence, the preponderance of which shows that the animal was vaccinated by a vaccine approved for use on that animal by the national association of

state public health veterinarians, inc., and that the animal had not exposed a person as defined by the advisory committee on immunization practices, before ordering the animal to be seized and examined. In addition, the department has the authority to quarantine or exterminate any animal suspected of rabies. If requested to do so by local authorities, the department shall assist them in the prevention and control of rabies where an emergency exists.

3. Any domestic cat or dog that bites or otherwise exposes a human to possible rabies, and when the owner can produce evidence of appropriate rabies immunization, must be confined for a period of at least ten days from the time of the bite or exposure. Access for evaluation must be made available to a licensed veterinarian at any time during the confinement period. The cat or dog must be evaluated by a licensed veterinarian on the last day of confinement prior to its release and at any time if it becomes ill during the confinement. If in the opinion of the examining veterinarian the cat or dog has signs or symptoms of rabies during the confinement period, the animal must be humanely destroyed in a manner that preserves the animal for appropriate rabies examination by the department.
4. Any domestic cat or dog that bites or otherwise exposes a human to possible rabies, and when the owner can not produce evidence of appropriate rabies immunization, must be confined at the owner's residence or impounded for a period of at least ten days from the time of the bite or exposure. Judgment regarding impoundment or confinement must be made by a law enforcement officer having appropriate jurisdiction. The officer may consult with a veterinarian, health officer, or physician before making the judgment. The animal must be confined or impounded and observed at the owner's expense. Access for evaluation must be made available to a licensed veterinarian at any time during the confinement period. The cat or dog must be evaluated by a licensed veterinarian at the beginning of confinement, at the first sign of any illness during confinement, and before release from confinement. If at any time the cat or dog becomes ill during the confinement and in the opinion of the examining veterinarian the cat or dog has signs or symptoms of rabies during the confinement period, the animal must be humanely destroyed in a manner that preserves the animal for appropriate rabies examination by the department.
5. Any stray or unwanted domestic cat or dog that bites or otherwise exposes a human to possible rabies must be humanely destroyed in a manner that preserves the animal for appropriate rabies examination by the department as soon as possible after the exposure.

SECTION 2. AMENDMENT. Section 23-01-19 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-01-19. Extermination of rabies. The state department of health shall obtain the cooperation and assistance of the game and fish department, the state veterinarian, and the ~~predatory animal and rodent~~ damage control division of the department of agriculture in carrying out the provisions of this section and section 23-01-18. It is the duty of the game and fish department and the department of agriculture, or any county sheriff's office or city police department, upon request of the state department of health, to exterminate or quarantine those animals suspected of having rabies and to carry out such other preventative measures as the department may from time to time request.

Approved March 23, 1997

Filed March 24, 1997

CHAPTER 226

SENATE BILL NO. 2170 (Senators Nething, Wanzek)

COUNTY BURIALS

AN ACT to amend and reenact section 23-06-03 of the North Dakota Century Code, relating to the duty of counties to bury deceased residents or inmates of public institutions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-06-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-06-03. Duty of burial. The duty of burying the body of a deceased person devolves upon the following persons:

1. If the deceased was married, upon the surviving husband or wife.
2. If the deceased was not married but left kindred, upon the person or persons in the same degree, of adult age, nearest of kin to the deceased and possessed of sufficient means to defray the necessary expenses.
3. If the person who has the duty of burial does not bury the body within the time required by this chapter, the person next specified shall bury the body.
4. If the deceased is not survived by a person described by subsection 1 or 2 and did not leave sufficient means to defray funeral expenses, including the cost of a casket, the county social service board of the county in which the deceased had residence for county general assistance purposes or if residence cannot be established, then the county social service board of the county in which the death occurs, shall employ some person to arrange for and supervise the burial or cremation. If the deceased was a resident or inmate of a public institution, the county in which the deceased was a resident for county general assistance purposes immediately before entering the institution shall employ a person to arrange for and supervise the burial or cremation. Each board of county commissioners may negotiate with the interested funeral directors or funeral homes regarding cremation expenses and burial expenses, but the total charges for burial services, including transportation of the deceased to the place of burial, the grave box or vault, grave space, and grave opening and closing expenses, may not be less than one thousand five hundred dollars. The county social service board shall pay the charge for funeral expenses as negotiated by the board of county commissioners, less any amount left by the deceased to defray the expenses.

Approved March 6, 1997
Filed March 6, 1997

CHAPTER 227

SENATE BILL NO. 2208

(Senators DeMers, Thane)
(Representatives Gorder, Kerzman, Rose, Svedjan)

TUBERCULOSIS CONTROL AND ERADICATION

AN ACT to create and enact two new sections to chapter 23-07.1 of the North Dakota Century Code, relating to the control of tuberculosis; to amend and reenact sections 23-07.1-01, 23-07.1-04, 23-07.1-05, 23-07.1-06, 23-07.1-07, 23-07.1-08, 23-07.1-09, 23-07.1-10, 23-07.1-12, 23-07.1-13, and 23-07.1-14 of the North Dakota Century Code, relating to the control and eradication of tuberculosis; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-07.1-01 of the North Dakota Century Code is amended and reenacted as follows:

23-07.1-01. Declaration of legislative intent. It is hereby declared that it is the intent of the legislative assembly, as follows: It is the policy of the state of North Dakota to treat persons having tuberculosis ~~in a communicable and contagious stage~~ as dangerous to the health and welfare of the citizens of the state. It is also the policy of the state to declare that all cases of tuberculosis ~~in a communicable or contagious stage~~ should be treated in a licensed hospital, ~~or at home if such home treatment is approved by the state health officer under the guidelines of the state health council~~ an appropriate facility in order to complete the course of therapy for tuberculosis to lower the risk of relapse. To this end, it is declared that isolation provisions to achieve treatment of such ~~communicable or contagious~~ tuberculosis persons should be accomplished to the fullest extent regardless of such person's ability to pay. It is further declared that such persons with ~~communicable or contagious~~ tuberculosis must be given full opportunity to enter treatment voluntarily and to seek treatment from physicians and hospitals of their own choice at their own expense. In order to ~~prevent~~ effectively prevent the spread of this disease it is necessary that the state:

1. Further the discovery, care, supervision, and treatment of persons having tuberculosis ~~in a communicable or contagious stage~~.
2. Encourage the use of all available public and private facilities to that end.
3. Regard this tuberculosis program as one of public health and one to be dealt with according to public health requirements rather than those of indigency.

SECTION 2. A new section to chapter 23-07.1 of the North Dakota Century Code is created and enacted as follows:

Definitions. As used in this chapter:

1. "Appropriate facility" includes a licensed hospital, a public or private outpatient clinic, a long term care facility, a correctional facility, or a

person's home, and may also include directly observed therapy under the supervision of the department.

2. "Department" means the state department of health, including local public health boards.
3. "Medically approved course of treatment" means a treatment regimen or therapy prescribed by a licensed physician.
4. "Tuberculosis" includes those cases in which a person is found to have tuberculosis based upon laboratory testing, clinical evidence, or as diagnosed by a physician, the department, or a local health officer.

SECTION 3. AMENDMENT. Section 23-07.1-04 of the North Dakota Century Code is amended and reenacted as follows:

23-07.1-04. State health officer - Designee - Responsibility. The state health officer or his designee; ~~under the guidelines of the state health council;~~ is responsible for the inpatient and outpatient care of persons afflicted or suspected of being afflicted with tuberculosis ~~in a contagious state~~. If the state health officer determines that suspected or actual tuberculous patients may be adequately cared for on an inpatient basis by contract ~~basis~~ with general hospitals or other appropriate facilities, authority for contracting with such ~~hospitals facilities~~ is granted to the state health officer. In addition, the state health officer is authorized to establish and maintain the necessary outpatient clinics for diagnostic workup and evaluation on all suspected or actual tuberculous patients in the state. The state health officer shall pay the contract fee to general hospitals or other appropriate facilities and provide funds to the outpatient evaluation clinics from funds to be appropriated for this purpose by the legislative assembly. The state's claim on patient benefits as provided in section 23-07.1-03 applies insofar as applicable to tuberculous patients in general hospitals and for services rendered in outpatient clinics. The state health officer or his a designee; ~~under the guidelines of the state health council;~~ has the power to:

1. Do any act necessary and proper in the performance of the functions imposed upon the state health officer by the provisions of this chapter.
2. Issue ~~temporary~~ orders and compel obedience thereto.
3. Administer oaths.

SECTION 4. AMENDMENT. Section 23-07.1-05 of the North Dakota Century Code is amended and reenacted as follows:

23-07.1-05. Reports - ~~Temporary orders~~ Orders for the custody of persons. Upon a report to or receipt of information by the state health officer or any physician in the state that any person is ~~afflicted with~~ reasonably suspected to have or to have been exposed to tuberculosis and as a source of infection endangers other persons, a report must be made to the state health officer. Upon the receipt of the report, the state health officer shall investigate the matter and if the state health officer is convinced that ~~an active case of infectious~~ the person may have, or may have been exposed to, tuberculosis in a communicable and contagious stage which endangers other persons exists, the state health officer shall request the person to voluntarily seek appropriate care and treatment. If the person refuses to accept voluntary care and treatment, the state health officer; ~~under the guidelines of the state health council;~~ may issue a temporary order for care and treatment as determined by the state health officer. If the state health officer's temporary order is

ignored, the state health officer may issue an order directing the sheriff or any peace officer of the county where the person alleged tubercular person to have tuberculosis resides to compel the attendance of the ~~alleged tubercular person~~ and may provide for suitable housing and care of the person until a hearing is held pursuant to section 23-07.1-08.

Prior to issuing a ~~temporary final~~ order under this section, the state health officer or a designee; ~~under the guidelines of the state health council,~~ shall hear all relevant testimony for or against the ~~temporary final~~ order. The examination and hearing on the order must be in the presence of the person alleged tubercular person to have tuberculosis. The alleged tubercular person and any relative may resist the order and the parties may be represented by counsel.

SECTION 5. AMENDMENT. Section 23-07.1-06 of the North Dakota Century Code is amended and reenacted as follows:

23-07.1-06. Physician's examination - Findings - ~~Order~~ Final order. The state health officer; ~~under the guidelines of the state health council,~~ may appoint a practicing physician to make a personal examination of ~~the a~~ a person alleged tubercular person to have tuberculosis and to make such thorough investigation of ~~his~~ that person's condition as will enable the state health officer to determine whether or not ~~such~~ that person has ~~active, infectious~~ tuberculosis ~~in a communicable and contagious stage and is dangerous to the public health~~. As soon as practical after the return of the physician's statement to the state health officer, the state health officer shall conclude ~~his~~ the investigation and make ~~his~~ a determination. If the state health officer finds that the alleged tubercular person does not have ~~active, infectious~~ tuberculosis and is not dangerous to public health ~~he shall make an order dismissing the case shall be dismissed~~. If the state health officer; ~~under the guidelines of the state health council,~~ finds that the person does have ~~active, infectious~~ tuberculosis ~~and is dangerous to public health,~~ he the state health officer shall issue ~~his temporary~~ a final order ~~which~~ that must:

1. State ~~his~~ findings that ~~such~~ the person does have ~~active, infectious~~ tuberculosis ~~and is dangerous to public health;~~ and
2. State that the person is not undertaking a medically approved course of treatment for tuberculosis; and
3. Authorize ~~the medical~~ an appropriate facility specified in the ~~temporary~~ order to receive and keep ~~such person in its facility for administer~~ necessary and appropriate care, treatment, quarantine, ~~and~~ or isolation until a hearing is held pursuant to section 23-07.1-08.

SECTION 6. AMENDMENT. Section 23-07.1-07 of the North Dakota Century Code is amended and reenacted as follows:

23-07.1-07. Sheriff's execution of state health officer's ~~temporary final~~ order. The ~~temporary final~~ order of the state health officer, in duplicate, together with the findings of the physician and the findings of the state health officer must be delivered to the sheriff who shall execute the same by conveying the person named therein to the ~~medical~~ facility specified in the order and delivering ~~him~~ the person, together with the findings of the physician and the state health officer's findings and the duplicate of the order, to the person in charge of such ~~medical~~ facility or to the local health officer or a designee if the person is sent home. ~~The person in charge, over his official signature, shall acknowledge the delivery on the original order and the sheriff shall return the order to the state health officer.~~ Return to the state health

~~officer may be by certified mail.~~ The sheriff must be allowed reasonable travel expenses, paid by the county, in the same manner and at the same rate as the expenses of other county officials are paid.

SECTION 7. AMENDMENT. Section 23-07.1-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-07.1-08. Hearing - Order. Unless waived by the alleged tubercular person, a hearing must be held by the district judge serving the county in which the person alleged tubercular person to have tuberculosis resides within one hundred twenty hours, exclusive of weekends and holidays, after the date of the state health officer's ~~temporary~~ final order. The court may consider all relevant evidence, including the results of a physical examination made pursuant to section 23-07.1-06, and the state health officer and the alleged tubercular person must be afforded an opportunity to testify, to present and cross-examine witnesses, and to be represented by counsel. Upon the request of the state health officer, the state's attorney of the county wherein the hearing is held shall represent the state health officer without additional compensation.

If, upon completion of the hearing, the court finds that the allegation that the person has ~~active, infectious~~ tuberculosis ~~in a communicable and contagious stage~~ has, and the allegation that that person was not undertaking a medically approved course of treatment for tuberculosis prior to the state health officer's final order, ~~have not been sustained by clear and convincing evidence~~, the court shall dismiss the case and order that the person alleged tubercular to have tuberculosis be discharged if ~~he had been~~ in custody prior to the hearing. If the court finds that the ~~allegation has~~ allegations have been sustained by clear and convincing evidence, the court shall issue an order ~~which shall~~ that must:

1. State its findings that the person does have ~~active, infectious~~ tuberculosis ~~in a communicable and contagious stage~~ and is dangerous to public health; and
2. State that the person has not undertaken a medically approved course of treatment for tuberculosis prior to the state health officer's order; and
3. Authorize the ~~medical~~ facility specified in the state health officer's final order to receive and keep ~~such~~ the person in its facility for necessary and appropriate care, treatment, quarantine, ~~and~~ or isolation for so long as the ~~disease remains in a communicable and contagious stage~~ and the danger to public health exists.

SECTION 8. AMENDMENT. Section 23-07.1-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-07.1-09. Appeal to supreme court - Habeas corpus - Hearing. An appeal from an order of the judge of a district court authorizing a specified medical facility to receive a person for care, treatment, quarantine, and isolation may be taken to the supreme court. In such a proceeding, the state's attorney of the county wherein the appeal is taken, without additional compensation, shall represent the state health officer. The clerk of the district court of the county from which the appeal is taken shall notify the state's attorney of the filing of ~~such~~ the appeal. The appeal must be limited to a review of the procedures, findings, and conclusions of the lower court. All persons placed in the custody of the state health officer under the provisions of this chapter for care, treatment, quarantine, and isolation are entitled to the benefit of the writ of habeas corpus and a determination as to whether a person in ~~such~~

custody has ~~active, infectious~~ tuberculosis in a communicable and contagious stage and is dangerous to public health must be made at the hearing. If the court decides that the person does have ~~active, infectious~~ tuberculosis and is dangerous to public health, such the decision does not preclude a subsequent application for a writ or the issuing of a writ upon a subsequent application, if it is alleged that such the person has been restored to health.

SECTION 9. AMENDMENT. Section 23-07.1-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-07.1-10. Discharge - Release. All orders of the state health officer or of a judge of a district court authorizing the reception and retention in custody for care, treatment, quarantine, ~~and or~~ isolation of persons having ~~active and infectious~~ tuberculosis endangering public health are effective only during the continuation of such the condition and any person who is ~~cured or who no longer~~ has completed a medically approved course of treatment for tuberculosis in a communicable and contagious stage must be discharged immediately from custody. The discharge must be made by the state health officer or a designee; ~~under the guidelines of the state health council.~~ The person in charge of a medical facility may also release any person admitted to the medical facility under the provisions of this chapter at such times and under such conditions as deemed advisable after consultation with the state health officer or a designee.

SECTION 10. AMENDMENT. Section 23-07.1-12 of the North Dakota Century Code is amended and reenacted as follows:

23-07.1-12. Confinement exception - Quarantine. Any person who observes quarantine regulations as established by the state health officer; ~~under the guidelines of the state health council;~~ and undertakes a medically approved course of treatment for tuberculosis may not be subject to confinement under the provisions of this chapter.

SECTION 11. AMENDMENT. Section 23-07.1-13 of the North Dakota Century Code is amended and reenacted as follows:

23-07.1-13. Tubercular Indian jurisdiction. Nothing in this chapter requires the admission of an enrolled Indian, resident on any reservation in this state, to any off-reservation institution except upon written request and authorization of the superintendent of the reservation on which said Indian is enrolled. However, in the public interest and with the objective of eradication of tuberculosis in the state of North Dakota, an Indian with ~~active infectious~~ tuberculosis off any reservation is subject to this chapter. It is the responsibility of the Indian affairs commission pursuant to the commission's powers and duties, stated in section 54-36-03, to work closely with the tribal councils and other reservation officials to adopt any agreements found necessary in assisting the state health officer in carrying out his responsibilities under this chapter so that all residents of this state will benefit, and eradication of tuberculosis in North Dakota can be achieved.

SECTION 12. AMENDMENT. Section 23-07.1-14 of the North Dakota Century Code is amended and reenacted as follows:

23-07.1-14. Care of tubercular patients - Acceptance of federal funds - General hospital. The state health officer, or ~~his~~ a designee, ~~under the guidelines of the state health council;~~ is hereby authorized to contract with public or private agencies for the care of ~~tubercular patients~~ persons having tuberculosis. The state health officer is hereby authorized to accept any federal funds or to enter into any

federal programs on behalf of ~~tubercular patients~~ persons having tuberculosis in North Dakota. The state health officer may, ~~under the guidelines of the state health council,~~ also utilize general hospitals or other appropriate facilities in the placement of recalcitrant ~~tuberculous patients~~ persons having tuberculosis.

SECTION 13. A new section to chapter 23-07.1 of the North Dakota Century Code is created and enacted as follows:

Penalty.

1. A person is guilty of a class A misdemeanor if:
 - a. That person fails to undertake diagnostic examination for tuberculosis upon the request of the state health officer which is based upon the reasonable suspicion that that person has or has been exposed to tuberculosis;
 - b. That person has been diagnosed with tuberculosis and fails to undertake a medically approved course of treatment for tuberculosis; or
 - c. That person is the parent of a minor or guardian of a person who violates subdivision a or b.
2. Upon conviction, the court may order that person to obtain a supervised medically approved course of treatment for tuberculosis until the treatment is completed, in addition to other penalties or conditions provided by law.

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 228

SENATE BILL NO. 2202

(Senator Watne)

HIV TESTING ORDERS AND HEARINGS

AN ACT to amend and reenact subsection 6 of section 23-07.5-02 of the North Dakota Century Code, relating to testing for the human immunodeficiency virus.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 23-07.5-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. Any testing done pursuant to subsection 3, 4, or 5 may be conducted in the most expedient manner possible. An individual who has had a significant exposure, upon receiving certification of the significant exposure as required by subdivision b of subsection 3 or subdivision b of subsection 4, may petition an appropriate district court for issuance of an order directing the patient or provider with whom the individual had a significant exposure to have blood drawn to be tested for the presence of the human immunodeficiency virus if a previously drawn blood sample is not available for testing. Upon receiving the petition, the court may issue an order confining the person to be tested until the hearing or an order establishing reasonable security for that person's attendance at the hearing. This order may be modified or extended if testing is ordered. The court shall hold a hearing on the petition within five days of the date the court receives the petition. The record of any court hearing conducted under this subsection is confidential. The court may issue an order requiring testing under this subsection only if:
 - a. The patient or provider has been requested to consent to testing and has refused to be tested and a sample of the patient's or provider's blood is not available to be used to test for the human immunodeficiency virus;
 - b. The court finds ~~clear and imminent danger to the public health or the health of~~ probable cause to believe that the person petitioning for the testing and the person has demonstrated a compelling need for the test which cannot be accommodated by other means has had a significant exposure with the person to be tested;
 - c. The petition substitutes a pseudonym for the true name of the person to be tested;
 - d. The court provides the person to be tested with notice and reasonable opportunity to participate in the proceeding if the person is not already a party to the proceeding;
 - e. The proceedings are conducted in camera unless the subject of the test agrees to a hearing in open court; and

- f. The court imposes appropriate safeguards against unauthorized disclosure which must specify the persons who have access to the information, the purposes for which the information may be used, and appropriate prohibition on future disclosure.

Approved April 10, 1997
Filed April 10, 1997

CHAPTER 229**SENATE BILL NO. 2361**

(Senators Krauter, Goetz, Urlacher)
(Representatives Jacobs, Kerzman, Martin)

BED AND BREAKFAST FACILITY DEFINITION

AN ACT to amend and reenact subsection 1 of section 23-09.1-01 of the North Dakota Century Code, relating to the definition of bed and breakfast facility; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 23-09.1-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Bed and breakfast facility" means a private home that is used to provide accommodations for a charge to the public, with not more than ~~four~~ seven lodging units, in which no more than two family style meals per day are provided.

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

Approved April 2, 1997

Filed April 3, 1997

CHAPTER 230

HOUSE BILL NO. 1254

(Representatives Oban, Carlisle, Coats)
(Senator B. Stenehjem)

MOBILE HOME PARK LICENSING

AN ACT to amend and reenact sections 23-10-05 and 23-10-06 of the North Dakota Century Code, relating to the licensing of mobile home parks, trailer parks, and campgrounds; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-10-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-10-05. License fees. The department shall charge the following fees for licenses to operate mobile home parks, trailer parks, or campgrounds in this state:

1. For a mobile home park containing at least three but not more than ten lots, fifty dollars.
2. For a mobile home park containing at least eleven but not more than twenty-five lots, seventy-five dollars.
3. For a mobile home park containing at least twenty-six but not more than fifty lots, one hundred dollars.
4. For a mobile home park containing more than fifty lots, one hundred twenty dollars.
5. For a trailer park or campground containing at least three but not more than ten lots, fifty dollars.
6. For a trailer park or campground containing at least eleven but not more than twenty-five lots, seventy-five dollars.
7. For a trailer park or campground containing at least twenty-six but not more than fifty lots, one hundred dollars.
8. For a trailer park or campground containing more than fifty lots, one hundred twenty dollars.

The department shall waive the license fee for any mobile home park, trailer park, or campground owned by the state, a municipality, or a nonprofit organization. The department shall waive all or a portion of the license fee for any mobile home park, trailer park, or campground that is subject to local sanitation, safety, and inspection requirements accepted by the department under section 23-10-02.1. A prorated annual license fee may be charged for new mobile home parks, trailer parks, and campgrounds.

SECTION 2. AMENDMENT. Section 23-10-06 of the North Dakota Century Code is amended and reenacted as follows:

23-10-06. License issuance - Transferability. The department shall issue a license to the applicant upon approving the application and receiving the license fee. The license must be upon a form prescribed by the department, must be for a term of one year from January first to December thirty-first, and must be renewable upon the same basis as that upon which it was originally issued. A penalty of twenty-five percent of the license fee must be imposed if the license is not renewed on or before January thirty-first following the expiration date. The license must be ~~transferable~~ transferred without charge if the proposed new owner applies in writing for a transfer of the license and certifies that the mobile home park, trailer park, or campground will be operated in accordance with this chapter.

Approved March 13, 1997

Filed March 13, 1997

CHAPTER 231

SENATE BILL NO. 2356

(Senators G. Nelson, Tallackson, Traynor)
(Representatives DeKrey, Dorso, Huether)

SULFUR DIOXIDE AIR RULES

AN ACT to create and enact a new section to chapter 23-25 of the North Dakota Century Code, relating to the adoption of state ambient air quality rules and standards for sulfur dioxide that are more strict than federal standards; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-25 of the North Dakota Century Code is created and enacted as follows:

Sulfur dioxide ambient air quality standards more strict than federal standards prohibited. The department may not adopt ambient air quality rules or standards for sulfur dioxide that affect coal conversion facilities or petroleum refineries that are more strict than federal rules or standards under the Clean Air Act [42 U.S.C. 7401 et seq.], nor may the department adopt ambient air quality rules or standards for sulfur dioxide that affect these facilities and refineries when there are no corresponding federal rules or standards. Any ambient air quality standards that have been adopted by the department for sulfur dioxide that are more strict than federal rules or standards under the Clean Air Act, or for which there are no corresponding federal rules or standards, are void as to coal conversion facilities and petroleum refineries. However, the department may adopt rules for dealing with exposures of less than one hour to sulfur dioxide emissions on a source-by-source basis pursuant to any regulatory program for dealing with short-term exposures to sulfur dioxide that may be established under the Clean Air Act. Any intervention levels or standards set forth in the rules, however, may not be more strict than federal levels or standards recommended or adopted under the federal program. In adopting the rules, the department shall follow all other provisions of state law governing the department's adoption of ambient air quality rules when there are no mandatory corresponding federal rules or standards.

SECTION 2. RETROACTIVE APPLICATION OF ACT. This Act is retroactive in application.

Approved March 20, 1997
Filed March 20, 1997

CHAPTER 232

HOUSE BILL NO. 1410

(Representatives Grosz, Hanson, Carlson)
(Senators Goetz, Krauter, Traynor)

AIR RULES MORE STRICT THAN FEDERAL ADOPTION

AN ACT to create and enact a new section to chapter 23-25 of the North Dakota Century Code, relating to when air quality rules that are more strict than federal standards may be adopted and the procedure for adoption of such rules and standards; and to amend and reenact section 23-01-02 of the North Dakota Century Code, relating to the composition of the health council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ **SECTION 1. AMENDMENT.** Section 23-01-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-01-02. Health council - Members, terms of office, vacancies, compensation, officers, meetings. The health council consists of ~~nine~~ eleven members appointed by the governor in the following manner: Four persons from the health care field ~~and~~, five persons representing consumer interests, one person from the energy industry, and one from the manufacturing and processing industry. The governor may select members to the council from recommendations submitted by trade, professional, and consumer organizations. On the expiration of the term of any member, the governor, in the manner provided by this section, shall appoint for a term of three years, persons to take the place of members whose terms on the council are about to expire. The officers of the council must be elected annually. Any state agency may serve in an advisory capacity to the health council at the discretion of the council. The council shall meet at least twice each year and at other times as the council or its chairman may direct. The health council shall have as standing committees any committees the council may find necessary. The chairman of the council shall select the members of these committees. The members of the council are entitled to receive the same compensation per day as provided in section 54-35-10 for members of the legislative council and their necessary mileage and travel expenses as provided in sections 54-06-09 and 44-08-04 while attending council meetings or in the performance of any special duties as the council may direct. The per diem and expenses must be audited and paid in the manner in which the expenses of state officers are audited and paid. The compensation provided for in this section may not be paid to any member of the council who received salary or other compensation as a regular employee of the state, or any of its political subdivisions, or any institution or industry operated by the state.

SECTION 2. A new section to chapter 23-25 of the North Dakota Century Code is created and enacted as follows:

¹ Section 23-01-02 was also amended by section 13 of Senate Bill No. 2052, chapter 432.

Requirements for adoption of air quality rules more strict than federal standards.

1. Notwithstanding any other provisions of this title, the department may not adopt air quality rules or standards affecting coal conversion and associated facilities, petroleum refineries, or oil and gas production and processing facilities which are more strict than federal rules or standards under the Clean Air Act [42 U.S.C. 7401 et seq.], nor may the department adopt air quality rules or standards affecting such facilities when there are no corresponding federal rules or standards, unless the more strict or additional rules or standards are based on a risk assessment that demonstrates a substantial probability of significant impacts to public health or property, a cost-benefit analysis that affirmatively demonstrates that the benefits of the more stringent or additional state rules and standards will exceed the anticipated costs, and the independent peer reviews required by this section.
2. The department shall hold a hearing on any rules or standards proposed for adoption under this section on not less than ninety days' notice. The notice of hearing must specify all studies, opinions, and data that have been relied upon by the department and must state that the studies, risk assessment, and cost-benefit analysis that support the proposed rules or standards are available at the department for inspection and copying. If at any time the department intends to rely upon any studies, opinions, risk assessments, cost-benefit analyses, or other information that were not available from the department when it gave its notice of hearing, the department shall give a new notice of hearing not less than ninety days prior to the hearing that clearly identifies the additional or amended studies, analyses, opinions, data or information upon which the department intends to rely and conduct an additional hearing if the first hearing has already been held.
3. In this section:
 - a. "Cost-benefit analysis" means both the analysis and the written document that contains:
 - (1) A description and comparison of the benefits and costs of the rule and of the reasonable alternatives to the rule. The analysis must include a quantification or numerical estimate of the quantifiable benefits and costs. The quantification or numerical estimate must use comparable assumptions (including time periods), specify the ranges of predictions, and explain the margins of error involved in the quantification methods and estimates being used. The costs that must be considered include the social, environmental, and economic costs that are expected to result directly or indirectly from implementation or compliance with the proposed rule.
 - (2) A reasonable determination whether as a whole the benefits of the rule justify the costs of the rule and that the rule will achieve the rulemaking objectives in a more cost-effective manner than other reasonable alternatives, including the alternative of no government action. In evaluating and comparing the costs and benefits, the department shall not rely on cost, benefit, or risk assessment information that is not

- accompanied by data, analysis, or supporting materials that would enable the department and other persons interested in the rulemaking to assess the accuracy, reliability, and uncertainty factors applicable to the information.
- b. "Risk assessment" means both the process used by the department to identify and quantify the degree of toxicity, exposure, or other risk posed for the exposed individuals, populations, or resources and the written document containing an explanation of how the assessment process has been applied to an individual substance, activity, or condition. The risk assessment must include a discussion that characterizes the risks being assessed. The risk characterization must include the following elements:
- (1) A description of the exposure scenarios used, the natural resources or subpopulations being exposed, and the likelihood of these exposure scenarios expressed in terms of probability.
 - (2) A hazard identification that demonstrates whether exposure to the substance, activity, or condition identified is causally linked to an adverse effect.
 - (3) The major sources of uncertainties in the hazard identification, dose-response, and exposure assessment portions of the risk assessment.
 - (4) When a risk assessment involves a choice of any significant assumption, inference, or model, the department in preparing the risk assessment shall:
 - (a) Rely only upon environmental protection agency approved air dispersion models.
 - (b) Identify the assumptions, inferences, and models that materially affect the outcome.
 - (c) Explain the basis for any choices.
 - (d) Identify any policy decisions or assumptions.
 - (e) Indicate the extent to which any model has been validated by, or conflicts with, empirical data.
 - (f) Describe the impact of alternative choices of assumptions, inferences, or mathematical models.
 - (5) The range and distribution of exposures and risks derived from the risk assessment.
- c. The risk assessment and cost benefit analysis performed by the department must be independently peer reviewed by qualified experts selected by the air pollution control advisory council.

4. This section applies to any petition submitted to the department pursuant to section 23-01-04.1 that identifies air quality rules or standards affecting coal conversion facilities or petroleum refineries that are more strict than federal rules or standards under the Clean Air Act [42 U.S.C. 7401 et seq.] or for which there are no corresponding federal rules or standards, regardless of whether the department has previously adopted the more strict or additional rules or standards pursuant to section 23-01-04.1. This section also applies to any petitions filed under section 23-01-04.1 affecting coal conversion facilities or petroleum refineries that are pending on the effective date of this section for which new rules or standards have not been adopted, and the department shall have a reasonable amount of additional time to comply with the more stringent requirements of this section. To the extent section 23-01-04.1 conflicts with this section, the provisions of this section govern. This section does not apply, however, to existing rules that set air quality standards for odor, hydrogen sulfide, visible and fugitive emissions, or emission standards for particulate matter and sulfur dioxide, but does apply to any new rules governing such matters.

Approved April 1, 1997

Filed April 2, 1997

CHAPTER 233

HOUSE BILL NO. 1257

(Representatives Delmore, S. Kelsh, Kretschmar)
(Senators DeMers, W. Stenehjem, Traynor)

EMERGENCY MEDICAL PERSONNEL SUPERVISION

AN ACT to create and enact a new section to chapter 23-27 of the North Dakota Century Code, relating to supervision of emergency medical services personnel; and to amend and reenact section 23-27-04.3 of the North Dakota Century Code, relating to emergency medical services personnel.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-27-04.3 of the North Dakota Century Code is amended and reenacted as follows:

23-27-04.3. Emergency medical services personnel training, testing, and certification, and quality review. The state health council shall adopt rules prescribing minimum training, testing, ~~and certification,~~ and quality review standards for ~~prehospital~~ emergency medical services personnel. Rules adopted must include a definition of minimum applicable standards, a definition of ~~prehospital~~ emergency medical services personnel, ~~and~~ provide for a mechanism for certifying persons who have met the required standards, and provide a mechanism to review and improve the quality of care rendered by emergency medical services personnel. Quality review and improvement information, data, records, and proceedings are not subject to subpoena or discovery or introduction into evidence in any civil action.

SECTION 2. A new section to chapter 23-27 of the North Dakota Century Code is created and enacted as follows:

Supervision of certified emergency service personnel. Certified emergency medical technicians-intermediate and paramedics, who are employed by a hospital and who are working in a nonemergency setting are under the supervision of the hospital's patient services management.

Approved April 3, 1997

Filed April 3, 1997

CHAPTER 234

SENATE BILL NO. 2301

(Senators Lee, DeMers, Krebsbach)
(Representatives Keiser, Kilzer, Rose)

MEDICAL PEER REVIEW RECORDS

AN ACT to create and enact a new chapter to title 23 of the North Dakota Century Code, relating to the confidentiality of and the privilege governing medical peer review records; to amend and reenact sections 31-08-01 and 43-17.1-05.1, and subsection 1 of section 43-17.1-06 of the North Dakota Century Code, relating to records and proceedings of medical review committees and reports to the commission on medical competency; to repeal section 23-01-02.1 of the North Dakota Century Code, relating to medical peer review confidentiality and privilege; to provide for application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 23 of the North Dakota Century Code is created and enacted as follows:

Definitions. As used in this chapter:

1. "Health care organization" means any hospital, hospital medical staff, clinic, long-term or extended care facility, ambulatory surgery center, emergency medical services unit, physician, group of physicians operating a clinic or outpatient care facility, combination of these entities, or federally designated state peer review organization.
2. "Health care provider" means a physician or other person licensed, certified, or otherwise authorized by the law of this state to provide health care services.
3. "Peer review committee" means any committee of a health care organization, composed of health care providers, employees, administrators, consultants, agents, or members of the health care organization's governing body, which conducts professional peer review.
4. "Peer review records" means all data, information, reports, documents, findings, compilations and summaries, testimony, and any other records generated by, acquired by, or given to a peer review committee as a part of any professional peer review, regardless of when the record is created. The term does not include original patient source documents. Peer review records also include all communications relating to a professional peer review, whether written or oral, between peer review committee members, peer review committee members and the peer review committee's staff, or peer review committee members and other persons participating in a professional peer review, including the person who is the subject of the professional peer review.
5. "Professional peer review" means all procedures a peer review committee uses or functions it performs to monitor, evaluate, and take action to

review the medical care provided to patients by health care organizations or health care providers to improve patient care and treatment or to provide quality assurance.

Peer review records - Confidentiality. Peer review records are confidential and may be used by a peer review committee and the committee members only for conducting a professional peer review.

Peer review records - Privileged - Exceptions. Peer review records are privileged and are not subject to subpoena or discovery or introduction into evidence in any civil or administrative action, except:

1. Records gathered from an original source that is not a peer review committee;
2. Testimony from any person as to matters within that person's knowledge, provided the information was not obtained by the person as a result of the person's participation in a professional peer review; or
3. Peer review records subpoenaed in an investigation conducted by the commission on medical competency pursuant to chapter 43-17.1 or subpoenaed in a disciplinary action before the board of medical examiners pursuant to section 43-17-30.1. Any peer review records provided to the commission or introduced as evidence in any disciplinary action before the board are confidential and are not subject to subpoena, discovery, or admissibility into evidence in any civil or administrative action, and are not public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

Peer review committee - Mandatory reports. A peer review committee shall report to the commission on medical competency any information that indicates a probable violation of subsection 4, 5, 16, or 17 of section 43-17-31. A health care organization is guilty of a class B misdemeanor if its peer review committee fails to make any report required by this section.

Liability of health care provider to patient. This chapter does not relieve any health care provider of any liability that the provider has incurred or may incur to a patient as a result of furnishing health care services to the patient.

Limitation of liability.

1. A person furnishing peer review records to a peer review committee with respect to any patient examined or treated by a health care provider is not, by reason of furnishing the records, liable in damages to any person or for willful violation of a privileged communication.
2. A health care organization, health care provider, or member of a peer review committee is not liable in damages to any person for any action taken or recommendation made regarding a professional peer review, if the organization, provider, or committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the organization, provider, or committee member.

SECTION 2. AMENDMENT. Section 31-08-01 of the North Dakota Century Code is amended and reenacted as follows:

31-08-01. Admissibility in evidence of business records - Term business defined - Exception. A record of an act, condition, or event ~~shall be~~ is competent evidence insofar as relevant, if:

1. The custodian or other qualified witness testifies to its identity and the mode of its preparation.
2. It was made in the regular course of business, at or near the time of the act, condition, or event.
3. The sources of information and the method and time of preparation, in the opinion of the court, were such as to justify its admission.

For the purpose of this section, the term "business" ~~shall include~~ includes every kind of business, profession, occupation, calling, or operation of institutions, whether carried on for profit or not. ~~The records and proceedings of any regularly constituted medical review committee of a licensed medical hospital or a medical society in this state shall not be subject to discovery or admissible as evidence.~~

² **SECTION 3. AMENDMENT.** Section 43-17.1-05.1 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-05.1. Reports to commission on medical competency - When required.

A physician, the state medical association and its components, a health care institution in the state, a state agency, a law enforcement agency in the state, or a court in the state having actual knowledge that a licensed physician may be medically incompetent, guilty of unprofessional conduct, or mentally or physically unable to safely engage in the practice of medicine shall promptly report that information to the commission. A medical licensee or any institution from which the medical licensee voluntarily resigns or voluntarily limits the licensee's staff privileges shall report that licensee's action to the commission if that action occurs while the licensee is under formal or informal investigation by the institution or a committee of the institution for any reason related to possible medical incompetence, unprofessional conduct, or mental or physical impairment. Upon receiving a report concerning a licensee, or on its own motion, the commission may investigate any evidence that appears to show a licensee is or may be medically incompetent, guilty of unprofessional conduct, or mentally or physically incapable of the proper practice of medicine. ~~Any~~ A person required to report under this section who makes a report in good faith ~~may~~ is not be subject to criminal prosecution or civil liability for making the report. A physician who obtains information in the course of a physician-patient relationship in which the patient is another physician is not required to report if the treating physician successfully counsels the other physician to limit or withdraw from practice to the extent required by the impairment. A physician who obtains information in the course of a professional peer review pursuant to section 1 of this Act is not required to report pursuant to this section. A physician who does not report information obtained in a professional peer review is not subject to criminal prosecution or civil liability for not making a report.

SECTION 4. AMENDMENT. Subsection 1 of section 43-17.1-06 of the North Dakota Century Code is amended and reenacted as follows:

² Section 43-17.1-05.1 was also amended by section 4 of House Bill No. 1135, chapter 373.

1. Subpoena witnesses and physician and hospital records relating to the practice of any physician under investigation. The confidentiality of the records by any other statute or law does not affect the validity of the commission's subpoena nor the admissibility of the records and board proceedings; however, the proceedings and records of a committee that are exempt from subpoena, discovery, or introduction into evidence under section ~~23-01-02.4~~ 1 of this Act are not subject to this subsection.

SECTION 5. REPEAL. Section 23-01-02.1 of the North Dakota Century Code is repealed.

SECTION 6. APPLICATION OF ACT. Section 1 of this Act does not apply in any action that was commenced before the effective date of this Act.

SECTION 7. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 18, 1997
Filed April 18, 1997

HIGHWAYS, BRIDGES, AND FERRIES

CHAPTER 235

HOUSE BILL NO. 1281

(Representatives Aarsvold, Rennerfeldt, Torgerson)
(Senators Lips, Robinson, Urlacher)

VACATING LAND ACQUIRED FOR HIGHWAY PURPOSES

AN ACT to amend and reenact section 24-01-28 of the North Dakota Century Code, relating to vacating land taken or acquired for highway purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

24-01-28. Vacating highways by director - Sale of property. The director may vacate any land or part thereof, or rights in land taken or acquired for highway purposes under the provisions of this title, by executing and recording a deed thereof, and ~~said~~ the vacation reverts the title to the land or rights in the persons, their heirs, successors, or assigns, in whom it was vested at the time of the taking. As oil, gas, and fluid minerals are not a part of and essential for highway purposes, all such rights heretofore taken, if any, are hereby vacated and returned to the person or persons in whom the title was vested at the time of taking, their heirs, administrators, executors, or assigns. Such reconveyance is subject to any existing contracts or agreements covering ~~such~~ the property, and all rights and benefits thereof accrue to the grantee. The governor, on recommendation of the director, may sell and convey on behalf of the state the interests of the state in property acquired by purchase under this title and deemed no longer necessary for the purposes thereof, and the proceeds of ~~such~~ the sale so far as practicable must be credited to the funds from which ~~such~~ the purchase was made originally. With the consent of the persons, their heirs, successors, or assigns in whom the title or rights to the land were vested at the time of the purchase or acquisition, the director may vacate land acquired by purchase under this title which is deemed no longer necessary for highway purposes and which the director has determined that the cost of the sale exceeds the estimated value of the property, by executing and recording a deed thereof, and the vacation reverts the title to the land or rights in those persons, their heirs, successors, or assigns.

Approved March 13, 1997
Filed March 13, 1997

CHAPTER 236**HOUSE BILL NO. 1177**

(Representatives Nichols, Skarphol, DeKrey)
(Senators Kinnoin, O'Connell, Solberg)

**NO-MOW AREAS TRANSFERRED TO INTERSTATE
HIGHWAYS**

AN ACT to create and enact a new section to chapter 24-01 of the North Dakota Century Code, relating to no-mow agreements by the department of transportation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 24-01 of the North Dakota Century Code is created and enacted as follows:

No-mow transfer to interstate highways. The department, in consultation with the game and fish department, shall negotiate with the United States fish and wildlife service and any other appropriate federal agency for the purposes of substituting the no-mow acres contained in the rights of way of United States highway 2 and United States highway 83 to the rights of way of interstate highway 94 or interstate highway 29, or both.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 237

HOUSE BILL NO. 1122

(Representative Soukup)

(At the request of the Department of Transportation)

DEPARTMENT OF TRANSPORTATION RECORDS ACCESS

AN ACT to amend and reenact section 24-02-11 of the North Dakota Century Code, relating to access to the records of the department of transportation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-02-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24-02-11. Records of department open to public - Certain records not open to public - Certified copies.

1. The director is custodian of, and shall preserve, the files and records of the department. The files and records of the department must be open to public inspection under reasonable regulations. However, records relating to the financial condition of any party ~~that has~~ are not open to public inspection if that party:
 - a. Has applied for prequalification as a bidder; ~~is;~~
 - b. Is designated as a prequalified bidder pursuant to this chapter; ~~or~~ ~~is;~~
 - c. Is an applicant under the disadvantaged business enterprise program ~~are not open to public inspection;~~
 - d. Makes a submission in furtherance of being selected as a consultant;
 - e. Is selected as a consultant; or
 - f. Is subject to audit by the department.
2. Copies of files and records of the department, when certified by the director as being true copies, must be received in evidence in any court in the state with the same force and effect as the originals.
3. The books of account of the department must be kept accurately and completely as must be prescribed or approved by the state auditor, which must show among other things the following facts:
 - a. The cost of maintaining the department, including the salaries and expenses of the individual members thereof.

2. b. The amounts of money expended for the construction or maintenance of the state highways, when and where, and upon what job or portion of the road expended, so that the cost per mile [1.61 kilometers] of ~~such~~ the construction or maintenance can be ascertained with ease.
3. c. The amount of road equipment and materials purchased and when and where and from whom purchased. ~~Such~~ The book also must show the price paid for each item. The original invoice or a photographic copy thereof must form a part of the permanent files and records in ~~said~~ the department.
4. d. The director shall charge a uniform fee, by type of record.

Approved March 23, 1997

Filed March 24, 1997

CHAPTER 238

SENATE BILL NO. 2164

(Senators Wanzek, Heitkamp)
(Representatives Fairfield, Jacobs, Murphy)

ROAD MACHINERY CONTRACTS

AN ACT to amend and reenact section 24-05-04 of the North Dakota Century Code, relating to purchases and agreements for the use of road machinery; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-05-04 of the North Dakota Century Code is amended and reenacted as follows:

24-05-04. Contracts to be advertised - Requirements for rental contracts. ~~All purchases~~ Any purchase of county road machinery and ~~all any rental contracts~~ contract or agreements agreement for the use of road machinery and other articles or ~~contracts~~ any contract for the improvement of the ~~highways~~ highway improvement, except necessary repairs for ~~such~~ road machinery, which ~~exceed~~ exceeds the sum of ~~fifteen~~ fifty thousand dollars; must be advertised ~~in the manner~~ as provided by law for the purchase of county supplies. The board of county commissioners may not enter into a rental contract or agreement for the use of road machinery and other articles for a longer period than twelve months from the date of ~~such the~~ the rental contract or agree to pay rental for the use of road machinery and other articles which would result in the lessor receiving rental at a rate in excess of ~~twenty per centum~~ twenty percent per annum year of the cash sale price ~~thereof~~ of the road machinery or other articles, which cash sale price of ~~such the~~ the road machinery and other articles must be clearly set forth in ~~all such any rental contracts~~ contract for road machinery and other articles, and failure to include ~~such this~~ such data in any rental contract for the use of road machinery and other articles renders ~~any such the~~ the rental contract ~~null and~~ void, and any payments made ~~thereunder~~ under the rental contract are recoverable from the county commissioners making ~~such the~~ the contract, jointly and severally. Notwithstanding the provisions of this section relating to the duration of rental contracts, the board of county commissioners may enter into lease-purchase agreements under which the annual payments by the county do not exceed twenty thousand dollars for the road machinery and articles covered by this section, if those agreements provide for the complete performance and full payment of the purchase price of the machinery or articles within five years from the date of the execution of the lease-purchase agreement according to ~~the provisions of~~ section 44-08-01.1.

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

Approved March 7, 1997
Filed March 10, 1997

CHAPTER 239**SENATE BILL NO. 2333**

(Senator Christmann)
(Representative Renner)

ROAD OBSTRUCTION REMOVAL

AN ACT to create and enact a new section to chapter 24-05 of the North Dakota Century Code, relating to obstructions on a county or township road right of way.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 24-05 of the North Dakota Century Code is created and enacted as follows:

County and township road rights of way - Removal of obstructions. The governing body having authority over the right of way of a county or township road may develop and implement rules governing the disposal of any stored hay or other obstruction placed on the right of way.

Approved April 2, 1997

Filed April 3, 1997

CHAPTER 240

SENATE BILL NO. 2372

(Senators O'Connell, Andrist, Traynor)
(Representatives Gerntholz, Martin, Nicholas)

SECTION LINES AS PUBLIC ROADS

AN ACT to amend and reenact section 24-07-03 of the North Dakota Century Code, relating to section lines as public roads.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-07-03 of the North Dakota Century Code is amended and reenacted as follows:

24-07-03. Section lines considered public roads open for public roads travel - Closing same under certain conditions. In all townships in this state, outside the limits of incorporated cities, and outside platted townsites, additions, or subdivisions recorded pursuant to sections 40-50.1-01 through 40-50.1-17 or recorded prior to July 1, 1987, under former chapter 40-50, the congressional section lines are considered public roads open for public roads travel, ~~open travel~~ to the width of thirty-three feet [10.06 meters] on each side of ~~such~~ the section lines.

The board of county commissioners, if petitioned by a person having an interest in the adjoining land or a portion thereof; ~~is authorized~~, after public hearing and a finding by the commissioners of public benefit, ~~to may~~ close section ~~line roads~~ lines or portions thereof which are not used for ten years, are not traveled due to natural obstacles or difficulty of terrain, are not required due to readily accessible alternate routes of travel, or are intersected by interstate highways causing ~~such~~ the section line ~~road~~ to be a dead end, providing the closing of ~~such~~ the dead end section line ~~road~~ does not deprive adjacent ~~landowner~~ landowners access to ~~his~~ the landowners' property. After ~~such~~ the section line ~~roads~~ lines are closed, they may be ~~leveled and farmed by~~ used to the benefit of the adjacent landowners ~~or tenants,~~ only if the leveling or farming does not disturb, remove, or destroy any. ~~However,~~ However, if monuments may not be disturbed, removed, or destroyed. ~~If drainage is interfered with due to the farming operations, alternate means of drainage must be provided for by the landowners or tenants farming~~ ~~such~~ the lands.

Approved April 10, 1997
Filed April 10, 1997

MENTAL AND PHYSICAL ILLNESS OR DISABILITY

CHAPTER 241

SENATE BILL NO. 2149 (Senator Nething)

SUPERINTENDENT OF STATE HOSPITAL APPOINTMENTS

AN ACT to amend and reenact sections 25-01-03 and 25-02-04 of the North Dakota Century Code, relating to the qualifications and appointment of the superintendent of the state hospital.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ **SECTION 1. AMENDMENT.** Section 25-01-03 of the North Dakota Century Code is amended and reenacted as follows:

25-01-03. Supervising officer to appoint superintendent of institutions - Salaries - Removal. The supervising officer shall appoint a superintendent for each of the institutions under its control, except for the state hospital, where the supervising officer shall appoint a superintendent ~~and a medical director~~ in consultation with a state hospital governing body. The tenure of office of each superintendent is two years from the date of the superintendent's appointment, and the superintendent must possess qualifications required by this title. Any superintendent may be removed by the supervising officer for misconduct, neglect of duty, incompetency, or other proper cause showing the superintendent's inability or refusal properly to perform the duties of office; ~~but a.~~ A removal at a time other than a termination of the superintendent's two-year tenure may be had only after an opportunity is given to the person to be heard before a board consisting of the governor, attorney general, and supervising officer of the institution on preferred written charges. A removal when made, however, is final. The supervising officer shall fix the compensation of each superintendent within the limits prescribed in this title and within the appropriations made by the legislative assembly for compensation.

SECTION 2. AMENDMENT. Section 25-02-04 of the North Dakota Century Code is amended and reenacted as follows:

¹ Section 25-01-03 was also amended by section 22 of House Bill No. 1013, chapter 13.

25-02-04. Superintendent to possess certain qualifications - Medical director - Employees. The superintendent of the state hospital must be a skilled health care administrator with professional training and experience relating to the management of facilities for mentally ill and chemically dependent persons and relating to the needs of the mentally ill and chemically dependent persons. ~~A~~ The medical director, who must be a licensed physician and board-certified psychiatrist, shall appoint and employ ~~recommend appointment of~~ all physicians and clinical staff, define their qualifications and duties, and ~~be responsible~~ have final authority for the organization and delivery of all medical and clinical services delivered to patients at the state hospital. The state hospital governing body has final approval of all physician and clinical staff appointments to the state hospital. The superintendent shall appoint the medical director in consultation with the supervising officer and with the approval of the governing body. If the superintendent is not a licensed physician and board-certified psychiatrist, the medical director, or a qualified designee of the medical director, shall act as the superintendent's designee in all matters in which the superintendent's opinion on medical or clinical treatment is required by law. Every physician on the professional staff must have a license issued by the state board of medical examiners. ~~The superintendent shall employ such other personnel as may be necessary and shall define their qualifications and duties.~~

Approved April 8, 1997

Filed April 8, 1997

CHAPTER 242

SENATE BILL NO. 2059

(Senators Nalewaja, Robinson, W. Stenehjem)
(Representatives Brown, Grande)

DISCLOSURE OF COMMITMENT RECORDS

AN ACT to amend and reenact section 25-03.1-43 of the North Dakota Century Code, relating to making confidential commitment records of the department of human services available to law enforcement in limited circumstances.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-03.1-43 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-43. Confidential records. All information and records obtained in the course of an investigation, evaluation, examination, or treatment under this chapter and the presence or past presence of a patient in a treatment facility must be kept confidential and not as public records, except as the requirements of a hearing under this chapter may necessitate a different procedure. All information and records are available to the court and, under regulations established by the department, may be disclosed only to:

1. Physicians and providers of health, mental health, or social and welfare services involved in caring for, treating, or rehabilitating the patient to whom the patient has given written consent to have information disclosed.
2. Individuals to whom the patient has given written consent to have information disclosed.
3. Persons legally representing the patient, including attorneys representing the patient in commitment proceedings, upon proper proof of representation.
4. Persons authorized by a court order.
5. Persons doing research or maintaining health statistics, if the anonymity of the patient is assured and the facility recognizes the project as a bona fide research or statistical undertaking.
6. The department of corrections and rehabilitation in cases in which prisoners sentenced to the state prison are patients in the state hospital on authorized transfers either by voluntary admissions or by court order.
7. Governmental or law enforcement agencies when necessary to secure the return of a patient who is absent without authorization from the facility where the patient was undergoing evaluation or treatment, or when necessary to report a crime committed on facility premises or against facility staff or patients, or threats to commit such a crime. The disclosures must be directly related to a patient's commission of a crime or threats to commit such a crime and are limited to the circumstances

of the incident, the name and address of the patient involved, and the patient's last known whereabouts.

8. Qualified service organizations and third-party payers to the extent necessary to perform their functions.
9. Victims and witnesses of a crime to the extent necessary to comply with the notification requirements of subsection 16 of section 12.1-34-02.
10. Law enforcement agencies to confirm and investigate the address of a person required to register under section 12.1-32-15.

Approved March 5, 1997

Filed March 6, 1997

CHAPTER 243

HOUSE BILL NO. 1047

(Legislative Council)

(Criminal Justice Committee)

(Representatives Mahoney, Kretschmar, R. Kelsch, Brown, Bernstein)

(Senator Nalewaja)

CIVIL COMMITMENT OF SEXUALLY DANGEROUS INDIVIDUAL

AN ACT to create and enact chapter 25-03.3 of the North Dakota Century Code, relating to civil commitment of sexually dangerous individuals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 25-03.3 of the North Dakota Century Code is created and enacted as follows:

25-03.3-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Committed individual" means an individual committed for custody and treatment pursuant to this chapter.
2. "Executive director" means the executive director of the department of human services or the executive director's designee.
3. "Qualified expert" means an individual who has an expertise in sexual offender evaluations and who is a psychiatrist or psychologist trained in a clinical program and licensed pursuant to this state's law, or a psychologist approved for exemption by the North Dakota board of psychology examiners.
4. "Respondent" means an individual subject to commitment pursuant to this chapter.
5. "Sexual act" means sexual contact between human beings, including contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or the vulva and the vulva; or the use of an object that comes in contact with the victim's anus, vulva, or penis. Sexual contact between the penis and the vulva, or between the penis and the anus, or an object and the anus, vulva, or penis of the victim, occurs upon penetration, however slight. Emission is not required.
6. "Sexual contact" means any touching of the sexual or other intimate parts of an individual for the purpose of arousing or satisfying sexual or aggressive desires.
7. "Sexually dangerous individual" means an individual who is shown to have engaged in sexually predatory conduct and who has a congenital or acquired condition that is manifested by a sexual disorder, a personality

disorder, or other mental disorder or dysfunction that makes that individual likely to engage in further acts of sexually predatory conduct which constitute a danger to the physical or mental health or safety of others. It is a rebuttable presumption that sexually predatory conduct creates a danger to the physical or mental health or safety of the victim of the conduct. The term does not include an individual with mental retardation.

8. "Sexually predatory conduct" means:
 - a. Engaging or attempting to engage in a sexual act or sexual contact with another individual, or causing or attempting to cause another individual to engage in a sexual act or sexual contact, if:
 - (1) The victim is compelled to submit by force or by threat of imminent death, serious bodily injury, or kidnapping directed toward the victim or any human being, or the victim is compelled to submit by any threat that would render an individual of reasonable firmness incapable of resisting;
 - (2) The victim's power to appraise or control the victim's conduct has been substantially impaired by the administration or employment, without the victim's knowledge, of intoxicants or other means for purposes of preventing resistance;
 - (3) The actor knows or should have known that the victim is unaware that a sexual act is being committed upon the victim;
 - (4) The victim is less than fifteen years old;
 - (5) The actor knows or should have known that the victim suffers from a mental disease or defect that renders the victim incapable of understanding the nature of the sexual act or contact;
 - (6) The victim is in official custody or detained in a hospital, prison, or other institution and is under the supervisory authority or disciplinary control of the actor; or
 - (7) The victim is a minor and the actor is an adult; or
 - b. Engaging in or attempting to engage in sexual contact with another individual or causing or attempting to cause another individual to have sexual contact, if:
 - (1) The actor knows or should have known that the contact is offensive to the victim; or
 - (2) The victim is a minor, fifteen years of age or older, and the actor is the minor's parent, guardian, or is otherwise responsible for general supervision of the victim's welfare.
9. "Should have known" means a reasonable individual without a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction in the actor's circumstances would have known.

10. "Superintendent" means the superintendent of the state hospital or the superintendent's designee.
11. "Treatment facility" means any hospital, including the state hospital, or any treatment facility that can provide directly, or by direct arrangement with other public or private agencies, evaluation and treatment of sexually dangerous individuals.

25-03.3-02. Jurisdiction and venue. The district court has original jurisdiction over the proceedings governed by this chapter. A proceeding pursuant to this chapter must be tried in the county in which the respondent resides or is located.

25-03.3-03. Sexually dangerous individual - Petition. If it appears that an individual is a sexually dangerous individual, the state's attorney may file a petition in the district court alleging that the individual is a sexually dangerous individual and stating sufficient facts to support the allegation.

25-03.3-04. Retention of records. Notwithstanding any other provision of law, all adult and juvenile case files and court records of an alleged offense defined by section 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, or 12.1-20-07 must be retained for fifty years and made available to any state's attorney for purposes of investigation or proceedings pursuant to this chapter.

25-03.3-05. Abrogation of confidentiality statutes and privileges. Notwithstanding any other provision of law requiring confidentiality of information about individuals receiving care, custody, education, treatment, or any other services from the state or any political subdivision, any confidential information about a respondent or committed individual must be released to a state's attorney for proceedings pursuant to this chapter unless release results in the loss of federal funds. The physician-patient privilege and psychotherapist-patient privilege do not apply to communications relevant to an issue in proceedings to commit an individual as a sexually dangerous person if the physician or psychotherapist in the course of diagnosis or treatment determines the patient is in need of commitment and to communications with a committed individual. The provision of any confidential or privileged information to the state's attorney does not render the state, any political subdivision, or any state or political subdivision official or employee, or other person liable pursuant to any criminal or civil law relating to confidentiality or privilege.

25-03.3-06. Use of confidential records. Upon request, any confidential records provided to the state's attorney pursuant to this chapter must be made available to the respondent or committed individual, the attorney of the respondent or committed individual, a qualified expert charged with examining the respondent or committed individual, the court, and any treatment facility in which the respondent or committed individual is being evaluated or treated pursuant to this chapter.

25-03.3-07. Appointment of guardian ad litem. At any stage of a proceeding under this chapter, on application of a party or on its own motion, the court may appoint a guardian ad litem for a minor who is a witness or otherwise involved in the proceeding, if the minor has no parent, guardian, or custodian appearing on the minor's behalf or the interests of those persons conflict with those of the minor. The department of human services shall pay the expense of the guardian ad litem fee as established by the court.

25-03.3-08. Sexually dangerous individual - Procedure on petition - Detention.

Upon the filing of a petition pursuant to this chapter, the court shall determine whether to issue an order for detention of the respondent named in the petition. The petition may be heard ex parte. The court shall issue an order for detention if there is cause to believe that the respondent is a sexually dangerous individual. If the court issues an order for detention, the order must direct that the respondent be taken into custody and transferred to an appropriate treatment facility to be held for evaluation and subsequent hearing pursuant to this chapter. Under this section, the department of human services shall pay for any expense incurred in the detention or evaluation of the respondent.

25-03.3-09. Right to counsel - Waiver.

1. Every respondent is entitled to legal counsel. Unless an appearance has been entered on behalf of the respondent, the court, within twenty-four hours from the time the petition was filed, exclusive of weekends or holidays, shall appoint counsel to represent the respondent. If a respondent retains counsel, the retained counsel immediately shall notify the court of that fact.
2. After consultation with counsel, the respondent may waive the right to counsel or the right to any hearing provided pursuant to this chapter by notifying the court in writing. The notification must clearly state the respondent's reasons for the waiver and be signed by counsel for the respondent.
3. If the court determines that the respondent is indigent, the court shall appoint counsel and order that appointed counsel be compensated by the county that is the respondent's place of residence in a reasonable amount based upon time and expenses.
4. The state's attorney of a county that has expended sums pursuant to subsection 3 may seek civil recovery of those sums from property of the respondent. Commencement of the action must occur within six years after the date the sums were paid. After notice and hearing, the court may order an individual to reimburse the county for expenditures made on that individual's behalf pursuant to this chapter.

25-03.3-10. Notice. If a respondent is detained pursuant to section 25-03.3-08, the state's attorney shall provide the respondent, or the respondent's guardian, if appropriate, with a copy of the petition filed with the court. The state's attorney shall provide the respondent with written notice of the respondent's right to a preliminary hearing and a commitment hearing, if probable cause is found to exist; the right to counsel and that counsel will be appointed for the respondent, if the respondent is indigent; and the right to have an expert of the respondent's choosing conduct an evaluation and testify on the respondent's behalf or, if the respondent is indigent, that the court will appoint a qualified expert for the respondent. The notice must state the date, time, and place for the preliminary hearing.

25-03.3-11. Preliminary hearing - Probable cause. The respondent is entitled to a preliminary hearing within seventy-two hours of being taken into custody pursuant to an order of the court, excluding weekends and holidays, unless the respondent chooses to waive the preliminary hearing pursuant to section 25-03.3-09. The respondent has a right to be present, to testify, and to present and cross-examine witnesses at any preliminary hearing. Every individual not necessary must be excluded, except that the court may admit any individual having a legitimate

interest in the proceeding. If the court determines after a preliminary hearing that there is probable cause to believe the respondent is a sexually dangerous individual, the court shall order that the respondent be transferred to an appropriate treatment facility for an evaluation as to whether the respondent has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes the respondent likely to engage in further acts of sexually predatory conduct. If the court determines that probable cause does not exist to believe that the respondent is a sexually dangerous individual, the court shall dismiss the petition. If the respondent waives the preliminary hearing, then the respondent must be immediately transferred to an appropriate treatment facility for an evaluation as to whether the respondent has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes the respondent likely to engage in further acts of sexually predatory conduct.

25-03.3-12. Sexually dangerous individual - Evaluation. The evaluation must be conducted by one or more experts chosen by the executive director. Whenever a respondent is subject to an evaluation pursuant to this chapter, the respondent may retain an expert to perform an evaluation or testify on the respondent's behalf. In the case of a respondent who is indigent, the court shall appoint a qualified expert to perform an examination or participate in the commitment proceeding on the respondent's behalf. The department of human services shall compensate any qualified expert appointed by the court on behalf of an indigent respondent in a reasonable amount based on time and expenses. An expert retained on behalf of the respondent must have reasonable access to the respondent for the purpose of the examination and to all relevant medical, psychological, and court records and reports.

25-03.3-13. Sexually dangerous individual - Commitment proceeding - Report of findings. Within thirty days after the finding of probable cause, the court shall conduct a commitment proceeding to determine whether the respondent is a sexually dangerous individual. The court may extend the time for good cause. At the commitment proceeding, any testimony and reports of an expert who conducted an examination are admissible, including risk assessment evaluations. Any proceeding pursuant to this chapter must be tried to the court and not a jury. At the commitment proceeding, the state's attorney shall present evidence in support of the petition and the burden is on the state to show by clear and convincing evidence that the respondent is a sexually dangerous individual. An individual may not be committed unless evidence is admitted establishing that at least two experts have concluded the individual has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes that individual likely to engage in further acts of sexually predatory conduct. The respondent has a right to be present, to testify, and to present and cross-examine witnesses. Every person not necessary must be excluded, except that the court may admit any person having a legitimate interest in the proceeding. If the respondent is found to be a sexually dangerous individual, the court shall commit the respondent to the care, custody, and control of the executive director. The executive director shall place the respondent in an appropriate facility or program at which treatment is available. The appropriate treatment facility or program must be the least restrictive available treatment facility or program necessary to achieve the purposes of this chapter. The executive director may not be required to create a less restrictive treatment facility or treatment program specifically for the respondent or committed individual. Unless the respondent has been committed to the legal and physical custody of the department of corrections and rehabilitation, the respondent may not be placed at and the treatment program for the respondent may not be provided at the state penitentiary or an affiliated penal facility. If the respondent is

found not to be a sexually dangerous individual, the court shall discharge the respondent.

25-03.3-14. Interagency placement. If a committed individual also has been committed to the legal and physical custody of the department of corrections and rehabilitation, the director of the department of corrections and rehabilitation and the executive director may consult one another and determine the appropriate placement of the individual and may transfer the individual between placements.

25-03.3-15. Evidence of prior acts. Notwithstanding any other provision of law, in any proceeding pursuant to this chapter, evidence of prior sexually predatory conduct or criminal conduct, including a record of the juvenile court, is admissible.

25-03.3-16. Limitation on findings as evidence in criminal proceedings. Any determination made pursuant to this chapter regarding whether a respondent is a sexually dangerous individual or has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction is inadmissible in any criminal proceeding against the respondent, including any criminal proceeding to determine whether the respondent is fit to stand trial, incapable of forming requisite intent, or not guilty by reason of lack of responsibility because of mental disease or defect.

25-03.3-17. Postcommitment proceeding, discharge, and further disposition.

1. A committed individual must remain in the care, custody, and control of the executive director until, in the opinion of the executive director, the individual is safe to be at large and has received the maximum benefit of treatment.
2. Each committed individual must have an examination of that individual's mental condition at least once a year. A report regarding the examination must be provided to the court that committed the individual. At the time of the annual examination, the committed individual has the right to have an expert examine the individual, and, upon the request of an indigent committed individual, the court shall appoint a qualified expert to examine the committed individual and report to the court. The department of human services shall compensate a qualified expert appointed by the court in a reasonable amount based on time and expenses. That expert must have reasonable access to the committed individual and to all records relating to the committed individual, including confidential records.
3. If a committed individual has been committed to an out-of-state facility by the executive director for purposes of treatment, an expert from that state may be appointed by the court as a qualified expert for an indigent committed individual for any postcommitment proceeding.
4. After any report pursuant to this section is provided to the court, the court may order further examination and investigation of the committed individual as the court considers necessary. The court may set the matter for a hearing. At the hearing, the committed individual is entitled to be present and to the benefit of the protections afforded at the commitment proceeding. The state's attorney shall represent the state at the hearing. After the hearing, the court shall determine whether the committed individual is to be discharged or to be retained as a sexually

dangerous individual in the care, custody, and control of the executive director.

5. The executive director may only discharge a sexually dangerous individual from commitment pursuant to a court order. The executive director may petition the committing court at any time for the discharge of the committed individual. The executive director shall give the state's attorney notice of any petition for discharge the executive director files with the court. Before the petition is granted, the state's attorney has the right to be heard by the court on the petition. The state's attorney may waive this right.

25-03.3-18. Petition for discharge - Notice.

1. Annually, the executive director shall provide the committed individual with written notice that the individual has a right to petition the court for discharge. The notice must explain to the committed person when the committed person has a right to a hearing on the petition. The notice must inform the committed person of the rights this chapter affords the committed person at a discharge hearing. The executive director shall forward a copy of the notice to the committing court.
2. If the committed individual files a petition for discharge and has not had a hearing pursuant to section 25-03.3-17 or this section during the preceding twelve months, the committed individual has a right to a hearing on the petition.
3. At the hearing on the petition for discharge, the committed individual is entitled to be present and to the benefit of the protections afforded at the commitment proceeding. The state's attorney shall represent the state and may have the committed individual evaluated by experts chosen by the state. The committed individual is entitled to have an expert of the committed individual's choice conduct an evaluation. The court shall appoint a qualified expert, if the committed individual is indigent and requests an appointment. The department of human services shall compensate a qualified expert appointed by the court in a reasonable amount based on time and expenses. That expert must have reasonable access to the committed individual and to all records relating to the committed individual, including confidential records.
4. At any hearing held pursuant to a petition for discharge, the burden of proof is on the state to show by clear and convincing evidence that the committed individual remains a sexually dangerous individual.

25-03.3-19. Appeal. The respondent has the right to an appeal from an order of commitment or an order denying a petition for discharge. Upon entry of an appealable order, the court shall notify the respondent of the right to appeal and the right to counsel. The notice of appeal must be filed within thirty days after entry of the order. The appeal must be limited to a review of the procedures, findings, and conclusions of the committing court. Pending a decision on appeal, the order appealed from remains in effect.

25-03.3-20. Limitation of liability. A person acting in good faith upon either actual knowledge or reliable information, who provides information to the state's attorney or the court pursuant to this chapter, is not subject to civil or criminal liability.

25-03.3-21. Recovery of expense. The department of human services, to the extent it has expended sums or provided services pursuant to this title, may seek civil recovery from the property of the respondent or committed individual. The department of human services must commence the action within six years after the department paid the sums or provided the services to the respondent or committed individual. After notice and hearing, the court may order an individual to reimburse the department of human services for all or part of the expenditures made for that individual pursuant to this chapter. In establishing the amount of reimbursement ordered under this section, the court shall consider the ability of the respondent or committed individual to pay.

Approved April 8, 1997

Filed April 8, 1997

CHAPTER 244

SENATE BILL NO. 2120

(Education Committee)

(At the request of the Superintendent of Public Instruction)

SCHOOL FOR THE BLIND OBJECT AND SUPERINTENDENT

AN ACT to create and enact a new section to chapter 25-06 of the North Dakota Century Code, relating to the superintendent of the school for the blind serving as the superintendent of the school for the deaf; to amend and reenact sections 25-06-02 and 25-06-07 of the North Dakota Century Code, relating to the object of and instruction provided at the school for the blind; and to repeal section 25-06-08 of the North Dakota Century Code, relating to clothing accounts at the school for the blind.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-06-02 of the North Dakota Century Code is amended and reenacted as follows:

25-06-02. Object of school for the blind. The school for the blind is a statewide resource center for the provision of services to residents of this state, including vision specific consultations, evaluations, information, and training and loans of adaptive devices, equipment, and materials. It shall receive and educate blind and partially blind children who are residents of this state and who, because of this handicap, are not able to receive ~~their~~ an appropriate education in the public schools of this state.

SECTION 2. A new section to chapter 25-06 of the North Dakota Century Code is created and enacted as follows:

Superintendent - Special duties. The superintendent of the school for the blind may also be the superintendent of the school for the deaf.

SECTION 3. AMENDMENT. Section 25-06-07 of the North Dakota Century Code is amended and reenacted as follows:

25-06-07. Instruction at school for the blind. The superintendent of the school for the blind shall provide ~~employment for the pupils at the school for the blind. Such pupils shall receive instruction in general subjects as well as in vocational training. The proceeds and products arising from the labor and employment of the pupils of to students at the school for the blind shall inure to the use and benefit of the school for the blind, and instruction in vision specific subjects, including orientation, mobility, braille, braille music, daily living skills, technology, vocational training, and recreation.~~

SECTION 4. REPEAL. Section 25-06-08 of the North Dakota Century Code is repealed.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 245

SENATE BILL NO. 2165

(Senators W. Stenehjem, Holmberg, St. Aubyn)
(Representatives Delmore, Kliniske, Poolman)

VISION SPECIFIC ADAPTIVE AID PURCHASE

AN ACT to create and enact a new section to chapter 25-06 of the North Dakota Century Code, relating to the purchase and resale of vision specific adaptive aids, devices, and appliances by the school for the blind and the creation of a revolving fund; to provide a continuing appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 25-06 of the North Dakota Century Code is created and enacted as follows:

Purchase and resale of vision specific adaptive aids, devices, and appliances - Revolving fund - Continuing appropriation. A revolving vision aids, devices, and appliances fund is hereby established in the state treasury to be used by the school for the blind to purchase and resell vision specific adaptive aids, devices, and appliances to be used by blind and visually impaired persons resident in this state. The school for the blind may apply service charges when needed to cover the cost of purchasing, invoicing, and shipping, and all revenue from the sale of aids, appliances, devices, and shipping and postage fees must be deposited in the fund. The school for the blind may receive gifts, grants, and donations for deposit in and use by the fund. All moneys in the revolving fund are hereby appropriated to the school for the blind on a continuing basis for expenditure for the purposes of this section.

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

Approved March 21, 1997
Filed March 21, 1997

INSURANCE

CHAPTER 246

HOUSE BILL NO. 1287

(Representatives Svedjan, Price)

(Senators Lips, Thane)

LIMITED BENEFIT POLICY DEFINITION AND APPLICATION

AN ACT to create and enact a new section to title 26.1 of the North Dakota Century Code, relating to the definition of limited benefit policy and the circumstances under which statutes affect those types of policies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to title 26.1 of the North Dakota Century Code is created and enacted as follows:

Definition of limited benefit policy - Application. In this title, "limited benefit policy" means a policy or certificate issued under a group insurance policy that provides coverage for accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance; coverage issued as a supplement to liability insurance, or automobile medical payment or no-fault insurance; or a policy or certificate of specified disease, hospital confinement indemnity, or any other type of limited benefit health insurance. Any statute that becomes effective after January 1, 1997, and affects accident and health insurance, or any hospital, medical, or major medical policy, whether issued on a group or individual basis, does not apply to a limited benefit policy unless the statute specifically identifies application to a limited benefit policy.

Approved March 26, 1997

Filed March 26, 1997

CHAPTER 247

SENATE BILL NO. 2132

(Industry, Business and Labor Committee)
(At the request of the Commissioner of Insurance)

INSURANCE INVESTMENTS, SUPPLEMENTS, AND ENDORSEMENTS

AN ACT to create and enact a new subsection to section 26.1-05-19, relating to insurance company investments; and to amend and reenact subsection 6 of section 26.1-03-17, subsection 4 of section 26.1-36.1-01, subsection 4 of section 26.1-36.1-05, and section 26.1-44-05 of the North Dakota Century Code, relating to an annual insurance premium tax filing fee, medicare supplement insurance, and endorsement of surplus lines insurance policies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 26.1-03-17 of the North Dakota Century Code is amended and reenacted as follows:

6. ~~An annual filing fee in the amount of two hundred dollars must be collected by the commissioner from each entity subject to this section. This fee must be reduced by an amount equal to the net tax due under subsections 4 and 2. In lieu of the tax required by subsection 1, the commissioner shall collect from each entity subject to this section an annual filing fee in the amount of two hundred dollars, provided the total tax liability of the entity pursuant to subsection 1 is less than two hundred dollars. No annual filing fee is due or may be collected from an entity if its total tax liability pursuant to subsection 1 is in excess of two hundred dollars. The annual filing fee may be reduced by any credits available pursuant to subsections 2 and 5.~~

SECTION 2. A new subsection to section 26.1-05-19 of the North Dakota Century Code is created and enacted as follows:

Loans, securities, or investments in addition to those permitted in this section, whether or not the loans, securities, or investments qualify or are permitted as legal investments under its charter, or under other provisions of this section or under other provisions of the laws of this state. The aggregate admitted value of the company's investments under this section may not at any one time exceed either seven percent of the company's admitted assets, or the amount equal to the company's capital and surplus in excess of the minimum capital and surplus required by law, whichever is less.

SECTION 3. AMENDMENT. Subsection 4 of section 26.1-36.1-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Medicare supplement policy" means a group or individual accident and health insurance policy or a subscriber contract of a health service corporation or a health care plan of a health maintenance organization or preferred provider organization, other than a policy issued pursuant

to a contract under section 1876 ~~or 1833~~ of the federal Social Security Act [42 U.S.C. 1395 et seq.] or an issued policy under a demonstration project ~~authorized pursuant to amendments to the federal Social Security Act specified in 42 U.S.C. 1395ss(g)(1)~~, which is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare. The term does not include a policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations.

SECTION 4. AMENDMENT. Subsection 4 of section 26.1-36.1-05 of the North Dakota Century Code is amended and reenacted as follows:

4. The commissioner may adopt rules for captions or notice requirements, determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not medicare supplement coverages, for all accident and health insurance policies sold to persons eligible for medicare, other than:
 - a. Medicare supplement policies- ; or
 - b. Disability income policies.
 - c. ~~Basic, catastrophic, or major medical expense policies.~~
 - d. ~~Single premium, nonrenewable policies.~~

SECTION 5. AMENDMENT. Section 26.1-44-05 of the North Dakota Century Code is amended and reenacted as follows:

26.1-44-05. Endorsement of policy. Every policy issued under this chapter must be endorsed "THIS POLICY IS ISSUED PURSUANT TO THE NORTH DAKOTA SURPLUS LINES INSURANCE STATUTE UNDER THE SURPLUS LINES BROKER'S LICENSE ~~NO. OF~~ _____. THE INSURER IS A QUALIFIED SURPLUS LINES INSURER, BUT IS NOT OTHERWISE LICENSED BY THE STATE OF NORTH DAKOTA AND DOES NOT PARTICIPATE IN THE NORTH DAKOTA INSURANCE GUARANTY ASSOCIATION." The surplus lines insurance broker shall properly complete the endorsement by typing or printing the broker's full name in the space provided and shall sign and date the endorsement.

Approved April 10, 1997
Filed April 10, 1997

CHAPTER 248

HOUSE BILL NO. 1418

(Representatives Boucher, Callahan, Jensen)
(Senators Mutzenberger, Nalewaja, O'Connell)

HEALTH CARE PROVIDER AND PATIENT COMMUNICATIONS

AN ACT to create and enact three new subsections to section 26.1-04-03 of the North Dakota Century Code, relating to the restriction or interference with medical communications between health care providers and patients and unfair indemnification provisions in contracts with health care providers; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 26.1-04-03 of the North Dakota Century Code is created and enacted as follows:

As used in sections 2 and 3 of this Act, unless the context otherwise requires:

- a. "Entity" includes a third-party administrator or other person with responsibility for contracts with health care providers under a health plan.
- b. "Health care provider" means a person that delivers, administers, or supervises health care products or services, for profit or otherwise, in the ordinary course of business or professional practice.
- c. "Health plan" means any public or private plan or arrangement that provides or pays the cost of health benefits, including any organization of health care providers that furnishes health services under a contract or agreement with this type of plan.
- d. "Medical communication" means any communication, other than a knowing and willful misrepresentation, made by a health care provider to a patient regarding the health care needs or treatment options of the patient and the applicability of the health plan to the patient's needs or treatment. The term includes communications concerning:
 - (1) Tests, consultations, and treatment options;
 - (2) Risks or benefits associated with tests, consultations, and options;
 - (3) Variation in experience, quality, or outcome among any health care providers or health care facilities providing any medical service;

- (4) The process, basis, or standard used by an entity to determine whether to authorize or deny health care services or benefits; and
 - (5) Financial incentives or disincentives based on service utilization provided by an entity to a health care provider.
- e. "Patient" includes a former, current, or prospective patient or the guardian or legal representative of any former, current, or prospective patient.

SECTION 2. A new subsection to section 26.1-04-03 of the North Dakota Century Code is created and enacted as follows:

- a. Interference with certain medical communications. An entity offering a health plan may not restrict or interfere with any medical communication and may not take any of the following actions against a health care provider solely on the basis of a medical communication:
- (1) Refusal to contract with the health care provider;
 - (2) Termination of or refusal to renew a contract with the health care provider;
 - (3) Refusal to refer patients to or allow others to refer patients to the health care provider; or
 - (4) Refusal to compensate the health care provider for covered services that are medically necessary.
- b. This subsection does not prohibit an entity from enforcing, as part of a contract or agreement to which a health care provider is a party, any mutually agreed upon terms and conditions, including terms and conditions requiring a health care provider to participate in and cooperate with all programs, policies, and procedures developed or operated by a health plan to assure, review, or improve the quality and effective utilization of health care services, if the utilization is according to guidelines or protocols that are based on clinical or scientific evidence and only if the guidelines or protocols under the utilization do not prohibit or restrict medical communications between providers and their patients.

SECTION 3. A new subsection to section 26.1-04-03 of the North Dakota Century Code is created and enacted as follows:

Unfair indemnification. A contract between an entity and a health care provider may not require the health care provider to indemnify the entity for the entity's negligence, willful misconduct, or breach of contract, and may not require a health care provider as a condition of participation to waive any right to seek legal redress against the entity. In addition to the proceedings and penalties provided in this chapter, a contract provision violating this subsection is void.

CHAPTER 249

SENATE BILL NO. 2236 (Senators Tallackson, Lips) (Representatives Carlson, Wald)

INSURANCE COMPANY SETOFFS

AN ACT to amend and reenact section 26.1-06.1-29 of the North Dakota Century Code, relating to insurance company setoff in liquidation or rehabilitation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-06.1-29 of the North Dakota Century Code is amended and reenacted as follows:

26.1-06.1-29. Setoffs.

1. Mutual debts or mutual credits, whether arising out of one or more contracts between the insurer and another person in connection with any action or proceeding under this chapter, must be set off and the balance only may be allowed or paid, except as provided in ~~subsections~~ subsection 2, 3, and 4 and section 26.1-06.1-32.
2. No setoff may be allowed in favor of any person where:
 - a. The obligation of the insurer to the person would not at the date of filing of a petition for ~~liquidation~~ receivership entitle the person to share as a claimant in the assets of the insurer;
 - b. The obligation of the insurer to the person was purchased by or transferred to the person with a view to its being used as a setoff;
 - c. The obligation of the insurer is owed to an affiliate of the person, or any other entity or association other than the person;
 - d. The obligation of the person is owed to an affiliate of the insurer, or any other entity or association other than the insurer;
 - e. The obligation of the person is to pay an assessment levied against the members or subscribers of the insurer, or is to pay a balance upon a subscription to the capital stock of the insurer, or is in any other way in the nature of a capital contribution; or
 - f. The obligations between the person and the insurer arise from business ~~which is both ceded to and assumed from the insurer except that the rehabilitator may, with regard to such business, allow certain setoffs in rehabilitation if the liquidator finds the allowance of the setoffs appropriate where either the person or the insurer has assumed risks and obligations from the other party and has ceded back to that party substantially the same risks and obligations.~~

3. The liquidator shall provide persons that assumed business from the insurer with accounting statements identifying debts which are currently due and payable. Such persons may set off against such debts only mutual credits which are currently due and payable by the insurer to such persons for the period covered by the accounting statement.
4. A person that ceded business to the insurer may set off debts due the insurer against only those mutual credits which the person has paid or which have been allowed in the insurer's delinquency proceeding.
5. Notwithstanding the foregoing, a setoff of sums due on obligations in the nature of those set forth in subdivision f of subsection 2 must be allowed for those sums accruing from business written where the contracts were entered into, renewed, or extended with the express written approval of the commissioner of insurance of the state of domicile of the new insolvent insurer, when in the judgment of such commissioner it was necessary to provide reinsurance in order to prevent or mitigate a threatened impairment or insolvency of a domiciliary insurer in connection with the exercise of the commissioner's regulatory responsibilities.
6. These amendments ~~must~~ become effective six months from the date of enactment and ~~must~~ apply to all contracts entered into, renewed, extended, or amended on or after that date, and to debts or credits arising from any business written or transactions occurring after the effective date pursuant to any such contract including those in existence prior to the effective date, and ~~must~~ supersede any agreements or contractual provisions which might be construed to enlarge the setoff rights of any person under any contract with the insurer. For purposes of this section, any change in the terms of, or consideration for, any such contract ~~must be~~ is deemed an amendment.

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

Approved March 20, 1997
Filed March 20, 1997

CHAPTER 250

SENATE BILL NO. 2310

(Senator Lips)

INSURANCE COMPANY INSOLVENCY DISTRIBUTION PRIORITIES

AN ACT to amend and reenact section 26.1-06.1-41 of the North Dakota Century Code, relating to priority of distributions in insurance company insolvencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-06.1-41 of the North Dakota Century Code is amended and reenacted as follows:

26.1-06.1-41. Priority of distribution. The priority of distribution of claims from the insurer's estate must be in accordance with the order in which each class of claims is herein set forth. Every claim in each class must be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclasses may be established within any class. The order of distribution of claims must be:

1. Class 1. The costs and expenses of administration during rehabilitation and liquidation, including the following:
 - a. The actual and necessary costs of preserving or recovering the assets of the insurer;
 - b. Compensation for all authorized services rendered in the rehabilitation and liquidation;
 - c. Any necessary filing fees;
 - d. The fees and mileage payable to witnesses;
 - e. Authorized reasonable attorney's fees and other professional services rendered in the rehabilitation and liquidation; and
 - f. The reasonable expenses of a guaranty association or foreign guaranty association for unallocated loss adjustment expenses.
2. Class 2. ~~Reasonable compensation to employees for services performed to the extent that they do not exceed two months of monetary compensation and represent payment for service performed within one year before the filing of the petition for liquidation or, if rehabilitation preceded liquidation, within one year before the filing of the petition for rehabilitation. Principal officers and directors are not entitled to the benefit of this priority except as otherwise approved by the liquidator and the court. Such priority must be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees. All claims under policies including such claims of the federal or any state or local government for losses incurred, ("loss claims")~~

including third-party claims and all claims of a guaranty association or foreign guaranty association. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values must be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits, or advantages recovered by the claimant, may not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligation of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to employees may be treated as a gratuity.

3. Class 3. All claims under policies including such claims of the federal or any state or local government for losses incurred, ("loss claims") including third-party claims and all claims of a guaranty association or foreign guaranty association. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values must be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits, or advantages recovered by the claimant, may not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligation of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to employees may be treated as a gratuity. Claims of the federal government not included in class 2.
4. Class 4. Claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors including claims of ceding and assuming companies in their capacity as such. Reasonable compensation to employees for services performed to the extent that they do not exceed two months of monetary compensation and represent payment for services performed within one year before the filing of the petition for liquidation or if rehabilitation preceded liquidation, within one year before the filing of the petition for rehabilitation. Principal officers and directors are not entitled to the benefit of this priority except as otherwise approved by the liquidator and the court. Such priority must be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.
5. Class 5. Claims of the federal or any state or local government except those under class 3 above. Claims, including those of any governmental body for a penalty or forfeiture, may be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims must be postponed to the class of claims under subsection 8. Claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors including claims of ceding and assuming companies in their capacity as such.
6. Class 6. Claims filed late or any other claims other than claims under subsections 7 and 8. Claims of any state or local government except those paid under class 2. Claims, including those of any state or local governmental body for a penalty or forfeiture, may be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose,

with reasonable and actual costs occasioned thereby. The remainder of the claims must be postponed to the class of claims under subsection 9.

7. Class 7. ~~Surplus or contribution notes, or similar obligations, and premium funds on assessable policies. Payments to members of domestic mutual insurance companies must be limited in accordance with law.~~ Claims filed late or any other claims other than claims under subsections 8 and 9.
8. Class 8. ~~The claims of shareholders or other owners in their capacity as shareholders.~~ Surplus or contribution notes, or similar obligations, and premium funds on assessable policies. Payment to member of domestic mutual insurance companies must be limited in accordance with law.
9. Class 9. The claims of shareholders or other owners in their capacity as shareholders.

If any provision of this section or the application of any provision of this section to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this section, and to this end the provisions are severable.

Approved March 21, 1997
Filed March 21, 1997

CHAPTER 251

HOUSE BILL NO. 1168

(Industry, Business and Labor Committee)
(At the request of the Commissioner of Insurance)

HEALTH INSURANCE COVERAGE REQUIREMENTS

AN ACT to create and enact section 26.1-36.4-03.1 of the North Dakota Century Code, relating to preexisting condition provisions; to amend and reenact sections 26.1-08-01, 26.1-08-04, 26.1-08-06, 26.1-08-06.1, 26.1-08-07, 26.1-08-12, subsection 3 of section 26.1-08-13, sections 26.1-36.3-01, 26.1-36.3-04, 26.1-36.3-05, 26.1-36.3-06, subsection 1 of section 26.1-36.3-11, sections 26.1-36.4-02, 26.1-36.4-03, 26.1-36.4-04, and 26.1-36.4-05 of the North Dakota Century Code, relating to the comprehensive health association of North Dakota, small group health insurance, and individual health insurance; to repeal section 26.1-08-05 of the North Dakota Century Code, relating to the comprehensive health association of North Dakota; to provide for application; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ **SECTION 1. AMENDMENT.** Section 26.1-08-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-08-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Association" means the association created by section 26.1-08-03.
2. "Association plan" means insurance policy coverage offered by the association through the lead carrier.
3. "Association plan premium" means the charge for membership in the association plan based on the benefits provided in section ~~26.1-08-05~~ or 26.1-08-06 and determined pursuant to section 26.1-08-08.
4. "Eligible person" means ~~an~~ either:
 - a. An individual who has been a resident of this state for a period of six months and meets the enrollment requirements of section 26.1-08-12; or
 - b. An individual who:
 - (1) Is currently a resident of this state;

¹ Section 26.1-08-01 was also amended by section 17 of Senate Bill No. 2046, chapter 51.

- (2) Has had eighteen months of qualifying previous coverage as defined in section 26.1-36.3-01, the most recent of which is coverage under a group health benefit plan, governmental plan, or church plan, as those terms are defined in section 26.1-36.3-01;
 - (3) Has applied for coverage under this chapter within sixty-three days of the termination of the qualifying previous coverage;
 - (4) Is not eligible for coverage under a group health benefit plan as that term is defined in section 26.1-36.3-01, medicare, or medicaid;
 - (5) Does not have any other health insurance coverage;
 - (6) Has not had the most recent qualifying previous coverage described in paragraph 2 terminated for nonpayment of premiums or fraud; and
 - (7) If offered the option, has elected continuation coverage under the Consolidated Omnibus Budget Reconciliation Act [Pub. L. 99-272; 100 Stat. 82], or under a similar state program, and that coverage was exhausted.
5. "Health benefits" means benefits offered on an indemnity or prepaid basis which pay the costs of or provide medical, surgical, or hospital care or, if selected by the eligible person, chiropractic care.
 6. ~~"Insurance company" means a company or organization operating pursuant to chapter 26.1-17, 26.1-18, or 26.1-36 and offering or selling accident and health insurance policies or health care or health service contracts. The term does not include a health service corporation operating under chapter 26.1-17 which does not write hospital or medical service contracts.~~ "Insurer" means any insurance company, nonprofit health service organization, fraternal benefit society, or health maintenance organization selling group or individual hospital, medical, surgical, or major medical coverage.
 7. "Lead carrier" means the insurance company selected by the association to administer the association plan.
 8. "Plan of health coverage" means any plan or combination of plans of coverage, including combinations of individual policies or coverage under a nonprofit health service plan.
 9. "Policy" means insurance, health care plan, health benefit plan as defined in section 26.1-36.3-01, or nonprofit health service plan contracts providing benefits for hospital, surgical, and medical care. Policy does not include coverage which is (a) limited to disability or income protection coverage, (b) automobile medical payment coverage, (c) supplemental to liability insurance, (d) designed solely to provide payment on a per diem basis, daily indemnity, or non-expense-incurred basis, or (e) credit accident and health insurance.
 10. "Qualified plan" means those health benefit plans certified by the commissioner as providing the minimum benefits required by section

~~26.1-08-05~~, 26.1-08-06 for a qualified comprehensive plan, or section 26.1-08-06.1 for a qualified medicare supplement plan, or ~~the actuarial equivalent of these benefits~~ other plan developed by the board and certified by the commissioner as complying with the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104-191; 110 Stat. 1936; 29 U.S.C. 1181 et seq.].

SECTION 2. AMENDMENT. Section 26.1-08-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-08-04. ~~Minimum benefits of association~~ Association plan. The association through its plan shall offer policies that provide at least the benefits of a ~~number one and two qualified plan A and qualified plan B and a qualified medicare extended plan~~ "qualified plans" as defined in section 26.1-08-01.

SECTION 3. AMENDMENT. Section 26.1-08-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-08-06. Minimum benefits of a qualified comprehensive plan B.

1. A plan of health coverage is a ~~number two~~ qualified comprehensive plan ~~B~~ if it otherwise meets the requirements established by chapter 26.1-36, and the other laws of the state, whether or not the policy is issued in this state, and meets or exceeds the following minimum standards:
 - a. The minimum benefits for covered individuals must, subject to ~~this subdivision~~ subsection 2, be equal to at least eighty percent of the cost of covered services in excess of an annual deductible which must not be less than five hundred dollars per person. The coverage must include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under this subsection. The coverage may be subject to a maximum lifetime benefit of not less than one million dollars.
 - b. Covered expenses must be the usual and customary charges for the following services and articles when prescribed by a physician:
 - (1) Hospital services.
 - (2) Professional services for the diagnosis or treatment of injuries, illness, or conditions, other than outpatient mental or dental, which are rendered by a physician or at a physician's direction.
 - (3) Drugs requiring a physician's prescription.
 - (4) Services of a nursing home for not more than one hundred twenty days in a year if the services commence within fourteen days following confinement of at least three days in a hospital for the same condition.
 - (5) Service of a home health agency up to a maximum of ~~one hundred eighty~~ two hundred seventy visits per year.
 - (6) Use of radium or other radioactive materials.

- (7) Oxygen.
 - (8) Anesthetics.
 - (9) Prostheses.
 - (10) Rental or purchase, as appropriate, of durable medical equipment.
 - (11) Diagnostic X-rays and laboratory tests.
 - (12) Oral surgery for partially or completely unerupted impacted teeth, a tooth root without the extraction of the entire tooth, or the gums and tissues of the mouth when not performed in connection with the extraction or repair of teeth.
 - (13) Services of a physical therapist.
 - (14) Transportation provided by licensed ambulance service to the nearest facility qualified to treat the condition.
 - (15) Substance abuse and mental disorders as outlined in sections 26.1-36-08 and 26.1-36-09.
- c. Covered expenses must include, at the option of the eligible person, the usual and customary charges for professional services rendered by a chiropractor and for services and articles prescribed by a chiropractor for which an additional premium may be charged.
- d. Covered expenses for the services or articles specified in this subsection do not include:
- (1) Any charge for any care or for any injury or disease either arising out of an injury in the course of employment and subject to a workers' compensation or similar law, for which benefits are payable without regard to fault under coverage statutorily required to be contained in any motor vehicle or other liability insurance policy or equivalent self-insurance, or for which benefits are payable under another accident and health insurance policy or medicare.
 - (2) Any charge for treatment for cosmetic purposes other than surgery for the repair of an injury or birth defect.
 - (3) Any charge for travel other than transportation provided by licensed ambulance service to the nearest facility qualified to treat the condition.
 - (4) Any charge for confinement in a private room to the extent it is in excess of the institution's charge for its most common semiprivate room, unless the private room is prescribed as medically necessary by a physician.
 - (5) That part of any charge for services or articles rendered or prescribed by a physician, dentist, chiropractor, or other

- health care personnel which exceeds the prevailing charge in the locality where the service is provided.
- (6) Any charge for services or articles the provision of which is not within the scope of authorized practice of the institution or individual rendering the services or articles.
 - (7) Care which is primarily for custodial or domiciliary purposes which would not qualify as eligible services under medicare.
 - (8) Any charge for organ transplants unless prior approval is received from the board of directors of the comprehensive health association.
2. A plan of health coverage is a number one qualified plan B if it meets the requirements established by the laws of this state and provides for the payment of at least eighty percent of the covered expenses required by this section in excess of a deductible which must not be less than one thousand dollars per person. The coverage must include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under subsection 1. Coverage may be subject to a maximum lifetime benefit of not less than one million dollars. A qualified comprehensive plan also must offer the eligible person the choice of an annual deductible of not less than one thousand dollars per person instead of that provided in subdivision a of subsection 1.

SECTION 4. AMENDMENT. Section 26.1-08-06.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-08-06.1. Minimum benefits of a qualified Qualified medicare extended supplement plan. A qualified plan of health coverage must be established for eligible persons who are enrolled under title 1, part 1 of Public Law 89-97 and amendments thereto (Health Insurance for the Aged Act), known as medicare. The plan of health care coverage must supplement medicare part A and medicare part B and must provide for benefits consisting of that portion of medicare eligible expenses which are not paid by medicare part A and medicare part B. The plan of health coverage must provide benefits for medicare deductible and coinsurance amounts for medicare eligible expenses to the extent recognized as reasonable by medicare part A and medicare part B. ~~No benefits may be provided for expenses that are not medicare eligible expenses.~~ A qualified medicare supplement plan is a medicare supplement plan F. This plan is available to individuals who are eligible for medicare by reason of age or disability.

SECTION 5. AMENDMENT. Section 26.1-08-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-08-07. Certification of qualified Approval of plans. Upon application by the association or the lead carrier for certification of a plan of health coverage as a qualified plan for the purposes of this chapter, the commissioner shall make a determination within ninety days as to whether the plan is qualified. All plans of health coverage must be labeled as "qualified plan A", "qualified plan B", or "nonqualified" on the front of the policy or evidence of insurance. All qualified plans must indicate whether they are number one or two coverage plans. The association or the lead carrier shall file with the commissioner all plans to be offered

under this chapter. The commissioner shall approve or disapprove any form within sixty days of receipt.

SECTION 6. AMENDMENT. Section 26.1-08-12 of the North Dakota Century Code is amended and reenacted as follows:

26.1-08-12. Enrollment by eligible person.

1. The association plan must be open for enrollment by eligible persons. A person is eligible and may enroll in the plan by submission of an application to the lead carrier. The application must provide:
 - a. The name, address, and age of the applicant, and length of applicant's residence in this state.
 - b. The name, address, and age of spouse and children, if any, if they are to be insured.
 - c. ~~Written~~ For an "eligible person" under subdivision a of subsection 4 of section 26.1-08-01, written evidence that the applicant has been rejected for accident and health insurance, or that restrictive riders or a preexisting conditions limitation, the effect of which is to reduce substantially coverage from that received by a person considered a standard risk, was required, by at least one insurance company within six months of the date of the application.
 - d. A designation of coverage desired.
2. Within thirty days of receipt of the application, the lead carrier shall either reject the application for failing to comply with the requirements of subsection 1 or forward the eligible person a notice of acceptance and billing information. Insurance is effective immediately upon receipt of the first month's association plan premium, and is retroactive to the date of the application, if the applicant otherwise complies with this chapter.
3. An eligible person may not purchase more than one policy from the association plan.
4. A person who obtains coverage pursuant to this section may not be covered for maternity during the first two hundred seventy days or any other preexisting condition during the first one hundred eighty days of coverage under the association plan if the person was diagnosed or treated for that condition during the ninety days immediately preceding the date of the application. Any person with coverage through the association plan due to a catastrophic condition or major illness who is also pregnant at the time of application is eligible for maternity benefits after the first one hundred eight days of coverage. This subsection does not apply to a person receiving nonelective procedures who has lost dependent status under a parent's or guardian's policy that has been in effect for the twelve-month period immediately preceding the filing of an application or to a person who is treated by nonelective procedures for a congenital or genetic disease. No preexisting condition exclusion or waiting period may be imposed under this subsection, or in the terms of the coverage obtained under this chapter, on an "eligible person" under subdivision b of subsection 4 of section 26.1-08-01. For an "eligible person" under subdivision a of subsection 4 of section 26.1-08-01, any

preexisting condition exclusion must be reduced by the aggregate period of qualifying previous coverage in the same manner as provided in subsection 3 of section 26.1-36.3-06.

SECTION 7. AMENDMENT. Subsection 3 of section 26.1-08-13 of the North Dakota Century Code is amended and reenacted as follows:

3. When the lifetime maximum benefit amount has been reached under ~~subsection 2 of section 26.1-08-05 or subdivision a of subsection 2 1~~ of section 26.1-08-06.

SECTION 8. AMENDMENT. Section 26.1-36.3-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36.3-01. Definitions. As used in this chapter and section 26.1-36-37.2, unless the context otherwise requires:

1. "Actuarial certification" means a written statement by a member of the American academy of actuaries, or other individual acceptable to the commissioner of insurance, that a small employer carrier is in compliance with section 26.1-36.3-04, based upon the person's examination of the small employer carrier, including a review of the appropriate records and the actuarial assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefit plans.
2. "Affiliate" or "affiliated" means any entity or person who directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.
3. "Association" means, with respect to health insurance coverage offered in this state, an association that:
 - a. Has been actively in existence for at least five years;
 - b. Has been formed and maintained in good faith for purposes other than obtaining insurance;
 - c. Does not condition membership in the association on any health status-related factor relating to an individual, including an employee or dependent of an employee;
 - d. Makes health insurance coverage offered through the association available to all members regardless of any health status-related factor relating to the members, or individuals eligible for coverage through a member; and
 - e. Does not make health insurance coverage offered through the association available other than in connection with a member of the association.
4. "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under the rating system for that class of business by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.

- ~~4.~~ 5. "Basic health benefit plan" means a lower cost health benefit plan developed under section 26.1-36.3-08.
- ~~5.~~ 6. "Board" means the board of directors of the program established under section 26.1-36.3-07.
- ~~6.~~ 6. "~~Carrier~~" means any entity that provides health insurance in this state. ~~The term includes an insurance company, nonprofit health service organization, fraternal benefit society, health maintenance organization, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation.~~
7. "Case characteristics" means demographic or other objective characteristics of a small employer that are considered by the small employer carrier in the determination of premium rates for the small employer; however, claim experience, health status, and duration of coverage are not case characteristics.
8. "Church plan" has the meaning given the term under section 3(33) of the Employee Retirement Income Security Act of 1974 [Pub. L. 93-406; 88 Stat. 829; 29 U.S.C. 1001 et seq.].
- ~~9.~~ 9. "Class of business" means all or a separate grouping of small employers established under section 26.1-36.3-03.
- ~~9.~~ 10. "Committee" means the health benefit plan committee created under section 26.1-36.3-08.
- ~~40.~~ 11. "Control" is as defined in section 26.1-10-01.
- ~~44.~~ 12. "Dependent" means a spouse, an unmarried child, including a dependent of an unmarried child, under the age of twenty-two, an unmarried child who is a full-time student under the age of twenty-six and who is financially dependent upon the enrollee, and an unmarried child, including a dependent of an unmarried child, of any age who is medically certified as disabled and dependent upon the enrollee as set forth in section 26.1-36-22.
- ~~42.~~ 13. "Eligible employee" means an employee who works on a full-time basis and has a normal workweek of thirty or more hours. The term includes a sole proprietor, a partner of a partnership, and an independent contractor, if the sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer. The term does not include an employee who works on a part-time, temporary, or substitute basis.
- ~~43.~~ 14. "Enrollee" means a person covered under a small employer health benefit plan.
- ~~44.~~ 15. "Established geographic service area" means a geographic area, as approved by the commissioner of insurance and based on the carrier's certificate of authority to transact insurance in this state, within which the carrier is authorized to provide coverage.
16. "Governmental plan" means an employee welfare benefit plan as defined in section 3(32) of the Employee Retirement Income Security Act of

1974 [Pub. L. 93-406; 88 Stat. 829; 29 U.S.C. 1001 et seq.] or any federal government plan.

17. "Group health benefit plan" means an employee welfare benefit plan as defined in section 3(1) of the Employee Retirement Income Security Act of 1974 [Pub. L. 93-406; 88 Stat. 829; 29 U.S.C. 1001 et seq.] to the extent that the plan provides medical care as defined in this section and including items and services paid for as medical care to employees or their dependents as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise. For purposes of this Act:

a. A plan, fund, or program that would not be, but for this section, an employee welfare benefit plan and which is established or maintained by a partnership, to the extent that the plan, fund, or program provides medical care, including items and services paid for as medical care, to present or former partners in the partnership, or to their dependents, as defined under the terms of the plan, fund, or program, directly or through insurance, reimbursement, or otherwise, must be treated as an employee welfare benefit plan which is a group health benefit plan;

b. In the case of a group health benefit plan, the term "employer" also includes the partnership in relationship to any partner; and

c. In the case of a group health benefit plan, the term "participant" also includes:

(1) In connection with a group health benefit plan maintained by a partnership, an individual who is a partner in relation to the partnership; or

(2) In connection with a group health benefit plan maintained by a self-employed individual, under which one or more employees are participants, the self-employed individual, if the individual is, or may become, eligible to receive benefits under the plan or the beneficiaries may be eligible to receive any benefit.

~~45. 18.~~ a. "Health benefit plan" means any hospital or medical or major medical policy, certificate, or subscriber contract. ~~The term does not include accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance, coverage issued as a supplement to liability insurance, worker's compensation or similar insurance, or automobile medical payment insurance.~~

b. "Health benefit plan" does not include one or more, or any combination of, the following:

(1) Coverage only for accident, or disability income insurance, or any combination thereof;

(2) Coverage issued as a supplement to liability insurance;

- (3) Liability insurance, including general liability insurance and automobile liability insurance;
 - (4) Workers' compensation or similar insurance;
 - (5) Automobile medical payment insurance;
 - (6) Credit only insurance;
 - (7) Coverage for onsite medical clinics; and
 - (8) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance.
- c. "Health benefit plan" does not include the following benefits if they are provided under a separate policy, certificate, or contract of insurance or are otherwise not an integral part of the plan:
- (1) Limited scope dental or vision benefits;
 - (2) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; or
 - (3) Such other similar, limited benefits as are specified in federal regulations.
- d. "Health benefit plan" does not include the following benefits if the benefits are provided under a separate policy, certificate, or contract of insurance, there is no coordination between the provision of the benefits, and any exclusion of benefits under any group health benefit plan maintained by the same plan sponsor, and the benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same plan sponsor:
- (1) Coverage only for specified disease or illness; or
 - (2) Hospital indemnity or other fixed indemnity insurance.
- e. "Health benefit plan" does not include the following if offered as a separate policy, certificate, or contract of insurance:
- (1) Medicare supplemental health insurance as defined under section 1882(g)(1) of the Social Security Act;
 - (2) Coverage supplemental to the coverage provided under 10 U.S.C. 55; and
 - (3) Similar supplemental coverage provided under a group health plan.
- b. f. "Health benefit plan" does not include A carrier offering a policy or certificate of specified disease, hospital confinement indemnity, or limited benefit health insurance; if the carrier offering that policy or certificate shall comply with the following:

- (1) ~~Files~~ File with the commissioner of insurance on or before March first of each year a certification that contains:
 - (a) A statement from the carrier certifying that the policy or certificate is being offered and marketed as supplemental health insurance and not as a substitute for hospital or medical expense insurance or major medical expense insurance.
 - (b) A summary description of the policy or certificate, including the average annual premium rates, or range of premium rates in cases where premiums vary by age, gender, or other factors, charged for the policy and certificate in this state.
- (2) When the policy or certificate is offered for the first time in this state on or after August 1, 1993, files with the commissioner the information and statement required in paragraph 1 at least thirty days before the date the policy or certificate is issued or delivered in this state.

19. "Health carrier" or carrier means any entity that provides health insurance in this state. For purposes of this chapter, health carrier includes an insurance company, a prepaid limited health service corporation, a fraternal benefit society, a health maintenance organization, nonprofit health service corporation, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation.

20. "Health status-related factor" means any of the following factors:

- a. Health status;
- b. Medical condition, including both physical and mental illness;
- c. Claims experience;
- d. Receipt of health care;
- e. Medical history;
- f. Genetic information;
- g. Evidence of insurability, including condition arising out of acts of domestic violence; or
- h. Disability.

~~46:~~ 21. "Index rate" means, for each class of business as to a rating period for small employers with similar case characteristics, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate.

~~47:~~ 22. "Late enrollee" means an eligible employee or dependent who requests enrollment in a health benefit plan of a small employer following the initial enrollment period during which the individual is entitled to enroll

under the terms of the health benefit plan, provided that the initial enrollment period is a period of at least thirty days. An eligible employee or dependent may not be considered a late enrollee, however, if:

- a. The individual:
 - (1) Was covered under qualifying previous coverage at the time of the initial enrollment;
 - (2) Lost coverage under qualifying previous coverage as a result of termination of employment or eligibility, the involuntary termination of the qualifying previous coverage, death of a spouse, or divorce; and
 - (3) Requests enrollment within ~~ninety~~ sixty-three days after termination of the qualifying previous coverage.
- b. The individual is employed by an employer that offers multiple health benefit plans and the individual elects a different plan during an open enrollment period.
- c. A court has ordered coverage be provided for a spouse or minor or dependent child under a covered employee's health benefit plan and request for enrollment is made within thirty days after issuance of the court order.
- d. The individual had coverage under a Consolidated Omnibus Budget Reconciliation Act [Pub. L. 99-272; 100 Stat. 82] continuation provision and the coverage under that provision was exhausted.

23. "Medical care" means amounts paid for:

- a. The diagnosis, care, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body;
- b. Transportation primarily for and essential to medical care referred to in subdivision a; and
- c. Insurance covering medical care referred to in subdivisions a and b.

24. "Network plan" means health insurance coverage offered by a health carrier under which the financing and delivery of medical care, including items and services paid for as medical care, are provided, in whole or in part, through a defined set of providers under contract with the carrier.

~~48.~~ 25. "New business premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or offered, or which could have been charged or offered, by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

~~49.~~ 26. "Plan of operation" means the plan of operation of the program established under section 26.1-36.3-07.

27. "Plan sponsor" has the meaning given the term under section 3(16)(B) of the Employee Retirement Income Security Act of 1974 [Pub. L. 93-406; 88 Stat. 829; 29 U.S.C. 1001 et seq.].
- ~~20:~~ 28. "Premium" means money paid by a small employer and eligible employees as a condition of receiving coverage from a small employer carrier, including any fees or other contributions associated with the health benefit plan.
- ~~24:~~ 29. "Producer" means insurance agent or insurance broker.
- ~~22:~~ 30. "Program" means the state small employer carrier reinsurance program created under section 26.1-36.3-07.
- ~~23:~~ 31. "Qualifying previous coverage" and "qualifying existing coverage" mean, with respect to an individual, health benefits or coverage provided under one or more any of the following:
- ~~a.~~ Medicare, medicaid, civilian health and medical program for uniformed services, Indian health services program, or any other similar publicly sponsored program.
 - ~~b.~~ A health insurance or health benefit arrangement that provides benefits similar to or exceeding benefits provided under the basic health benefit plan.
 - ~~c.~~ An individual health insurance policy, including coverage issued by a health maintenance organization, nonprofit health service corporation, and fraternal benefit society that provides benefits similar to or exceeding the benefits provided under the basic health benefit plan, provided that the policy has been in effect for a period of at least one year.
 - a. A group health benefit plan;
 - b. A health benefit plan;
 - c. Medicare;
 - d. Medicaid;
 - e. Civilian health and medical program for uniformed services;
 - f. A medical care program of the Indian health service or of a tribal organization;
 - g. A state health benefit risk pool, including coverage issued under chapter 26.1-08;
 - h. A health plan offered under 5 U.S.C. 89;
 - i. A public health plan as defined in federal regulations; and
 - j. A health benefit plan under section 5(e) of the Peace Corps Act [Pub. L. 87-293; 75 Stat. 612; 22 U.S.C. 2504(e)].

The term "qualifying previous coverage" does not include coverage of benefits excepted from the definition of a "health benefit plan" under subsection 18.

24. 32. "Rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect.
25. 33. "Reinsuring carrier" means a small employer carrier which reinsures individuals or groups with the program.
26. 34. "Restricted network provision" means any provision of a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier under chapters 26.1-17, 26.1-18, and 26.1-47 to provide health care services to covered individuals.
27. 35. "Small employer" means any person that is actively engaged in business that, on at least fifty percent of its working days during the preceding calendar quarter, employed at least three, but no more than twenty-five eligible employees, the majority of whom were employed within this state. In determining the number of eligible employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of state taxation, must be considered one employer, in connection with a group health plan with respect to a calendar and a plan year, an employer who employed an average of at least two but not more than fifty eligible employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year.
28. 36. "Small employer carrier" means any carrier that offers health benefit plans covering eligible employees of one or more small employers in this state.
29. 37. "Standard health benefit plan" means a health benefit plan developed under section 26.1-36.3-08.

SECTION 9. AMENDMENT. Section 26.1-36.3-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36.3-04. Restrictions relating to premium rates.

1. This section only applies to a health benefit plan offered by a small employer who employed an average of at least two but not more than twenty-five eligible employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year.
2. Premium rates for health benefit plans subject to this ~~chapter~~ section and section 26.1-36-37.2 are subject to the following:
 - a. The index rate for a rating period for any class of business may not exceed the index rate for any other class of business by more than fifteen percent.
 - b. For a class of business, the premium rates charged during a rating period to small employers with similar case characteristics for the

same or similar coverage, or the rates that could be charged to the employers under the rating system for that class of business, may not vary from the index rate by more than twenty percent of the index rate.

- c. The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of:
 - (1) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers;
 - (2) Any adjustment due to the claim experience, health status, or duration of coverage of the employees or dependents of the small employer as determined from the small employer carrier's rate manual for the class of business; however, the adjustment may not exceed fifteen percent annually and must be adjusted pro rata for rating periods of less than one year; and
 - (3) Any adjustment due to change in coverage or change in the case characteristics of the small employer, as determined from the small employer carrier's rate manual for the class of business.
- d. Adjustments in rates for claim experience, health status, and duration of coverage may not be charged to individual employees or dependents. Premium rates charged for a health benefit plan may not vary by a ratio of greater than four to one after January 1, 1997. Any adjustment must be applied uniformly to the rates charged for all employees and dependents of the small employer.
- e. Premium rates for health benefit plans must comply with the requirements of this section notwithstanding any assessment paid or payable by a small employer carrier pursuant to section 26.1-36.3-07.
- f. A small employer carrier may utilize industry as a case characteristic in establishing premium rates, but the highest rate factor associated with any industry classification may not exceed the lowest rate factor associated with any industry classification by more than fifteen percent.
- g. In the case of health benefit plans delivered or issued for delivery before August 1, 1993, a premium rate for a rating period may exceed the ranges set forth in subdivisions a and b of subsection 4 for a period of three years following August 1, 1993. Under this subdivision, the percentage increase in the premium rate charged to

a small employer for a new rating period may not exceed the sum of:

- (1) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers.
 - (2) Any adjustment due to change in coverage or change in the case characteristics of the small employer, as determined from the carrier's rate manual for the class of business.
- h. (1) Small employer carriers shall apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business. Rating factors must produce premiums for identical groups which differ only by amounts attributable to plan design and do not reflect differences due to the nature of the groups assumed to select particular health benefit plans.
- (2) A small employer carrier shall treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.
- i. For the purposes of this subsection, a health benefit plan that uses a restricted provider network may not be considered similar coverage to a health benefit plan that does not use a restricted provider network, if the use of the restricted provider network results in substantial differences in claims costs.
- j. A small employer carrier may not use case characteristics, other than age, gender, industry, geographic area, family composition, and group size, without prior approval of the commissioner. Gender may not be used as a case characteristic after January 1, 1996.
- k. The commissioner shall adopt rules to:
- (1) Assure that differences in rates charged for health benefit plans by small employer carriers are reasonable and reflect objective differences in plan design, not including differences due to the nature of the groups assumed to select particular health benefit plans;
 - (2) Prescribe the manner in which case characteristics may be used by small employer carriers; and
 - (3) Otherwise implement this section.

- ~~2.~~ 3. A small employer carrier may not transfer a small employer involuntarily into or out of a class of business. A small employer carrier may not offer to transfer a small employer into or out of a class of business unless the offer is made to transfer all small employers in the class of business without regard to case characteristics, claim experience, health status, or duration of coverage.
- ~~3.~~ 4. The commissioner may suspend for a specified period the application of subdivision a of subsection 4 2 as to the premium rates applicable to one or more small employers included within a class of business of a small employer carrier for one or more rating periods upon a filing by the small employer carrier and a finding by the commissioner that the suspension is reasonable in light of the financial condition of the small employer carrier or, with the prior approval of the committee established pursuant to section 26.1-36.3-08, that the suspension would enhance the efficiency and fairness of the marketplace for small employer health insurance.
- ~~4.~~ 5. In connection with the offering for sale of any health benefit plan to a small employer, a small employer carrier shall make a reasonable disclosure, as part of its solicitation and sales materials, of:
- a. The extent to which premium rates for a specified small employer are established or adjusted based upon the actual or expected variation in claims costs or actual or expected variation in health status of the employees of the small employer and their dependents;
 - b. The provisions of the health benefit plan concerning the small employer carrier's right to change premium rates and factors, other than claim experience, that affect changes in premium rates;
 - c. The provisions relating to renewability of policies and contracts; and
 - d. The provisions relating to any preexisting condition exclusion.
- ~~5.~~ 6.
- a. Each small employer carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.
 - b. Each small employer carrier shall file with the commissioner on or before March fifteenth of each year an actuarial certification certifying that the carrier is in compliance with this chapter and that the rating methods of the small employer carrier are actuarially sound. The certification must be in a form and manner and contain information specified by the commissioner. The small employer carrier shall retain a copy of the certification at the carrier's principal place of business.
 - c. A small employer carrier shall make the information and documentation described in subdivision a of this subsection available to the commissioner upon request. Except in cases of violations of this chapter and section 26.1-36-37.2, the information

is proprietary and trade secret information and is not subject to disclosure by the commissioner to persons outside the department except as agreed to by the small employer carrier or as ordered by a court of competent jurisdiction.

SECTION 10. AMENDMENT. Section 26.1-36.3-05 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36.3-05. Renewability of coverage.

1. A health benefit plan subject to this chapter and section 26.1-36-37.2 must be renewable with respect to all eligible employees and dependents, at the option of the small employer, except for any of the following:
 - a. ~~Nonpayment of the required premiums. The plan sponsor has failed to pay premiums or contributions in accordance with the terms of the health benefit plan or the health carrier has not received timely premium payments.~~
 - b. ~~Fraud or misrepresentation of the small employer or, with respect to coverage of individual insureds, the insureds or their representatives. The plan sponsor or small employer has performed an act or practice that constitutes fraud or made an intentional misrepresentation of a material fact under the terms of the coverage.~~
 - c. Noncompliance with the carrier's minimum participation requirements.
 - d. Noncompliance with the carrier's employer contribution requirements.
 - e. ~~Repeated misuse of a provider network provision.~~
 - f. ~~The small employer carrier electing to nonrenew all of its health benefit plans delivered or issued for delivery to small employers in this state. In that case the carrier shall:~~
 - (1) ~~Provide advance notice of its decision not to renew to the commissioner in each state in which it is licensed; and~~
 - (2) ~~Provide notice of the decision not to renew coverage to all affected small employers and to the commissioner in each state in which an affected insured individual is known to reside at least one hundred eighty days prior to the nonrenewal of any health benefit plan by the carrier. Notice to the commissioner under this paragraph must be provided at least three working days prior to the notice to the affected small employers.~~
 - e. A decision by the small employer carrier to discontinue offering a particular type of group health benefit plan in the state's small employer market. A type of health benefit plan may be discontinued by the carrier in that market only if the carrier:

- (1) Provides advance notice of its decision under this paragraph to the commissioner in each state in which it is licensed;
 - (2) Provides notice of the decision not to renew coverage to all affected small employers, participants, and beneficiaries, and to the commissioner in each state in which an affected insured individual is known to reside at least ninety days prior to the nonrenewal of any health benefit plans by the carrier. Notice to the commissioner under this subdivision must be provided at least three working days prior to the notice to the affected small employers and participants and beneficiaries;
 - (3) Offers to each plan sponsor provided the type of group health benefit plan the option to purchase all other health benefit plans currently being offered by the carrier to employers in the state; and
 - (4) In exercising the option to discontinue the particular type of group health benefit plan and in offering the option of coverage under paragraph 3, the carrier acts uniformly without regard to the claims experience of those sponsors or any health status-related factor relating to any participants or beneficiaries covered or new participants or beneficiaries who may become eligible for such coverage.
- f. A decision by the small employer carrier to discontinue offering and to nonrenew all its health benefit plans delivered or issued for delivery to small employers in this state. In such a case, the carrier shall:
- (1) Provide advance notice of its decision under this paragraph to the commissioner in each state in which it is licensed;
 - (2) Provide notice of the decision not to renew coverage to all affected small employers, participants, and beneficiaries, and to the commissioner in each state in which an affected insured individual is known to reside at least one hundred eighty days prior to the nonrenewal of any health benefit plans by the carrier. Notice to the commissioner under this subdivision shall be provided at least three working days prior to the notice to the affected small employers and participants and beneficiaries; and
 - (3) Discontinue all health insurance issued or delivered for issuance in the state's small employer market and not renew coverage under any health benefit plan issued to a small employer.
- g. In the case of health benefit plans that are made available in the small employer market only through one or more associations, the membership of an employer in the association, on the basis of which the coverage is provided, ceases, but only if the coverage is terminated under this paragraph uniformly without regard to any health status-related factor relating to any covered individual.

- g. h. The commissioner finds that the continuation of the coverage would not be in the best interests of the policyholders or certificate holders or would impair the carrier's ability to meet its contractual obligations. In this case the commissioner shall assist affected small employers in finding replacement coverage.
2. A small employer carrier that elects not to renew a health benefit plan under subdivision f of subsection 1 may not write new business in the small employer market in this state for a period of five years from the date of notice to the commissioner.
 3. In the case of a small employer carrier doing business in one established geographic service area of the state, this section only applies to the carrier's operations in that service area.
 4. A small employer carrier offering through a network plan may not be required to offer coverage or accept applications pursuant to subsection 1 or 2 in the case of the following:
 - a. To an eligible person who no longer resides, lives, or works in the service area, or in an area for which the carrier is authorized to do business, but only if coverage is terminated under this subdivision uniformly without regard to any health status-related factor; or
 - b. To a small employer that no longer has any enrollee in connection with the plan who lives, resides, or works in the service area of the carrier, or the area for which the carrier is authorized to do business.
 5. At the time of coverage renewal, a health insurance carrier may modify the health insurance coverage for a product offered to a group health plan, if for coverage that is available in such market other than only through one or more bona fide associations, the modification is consistent with state law and effective on a uniform basis among group health plans with that product.

SECTION 11. AMENDMENT. Section 26.1-36.3-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36.3-06. Availability of coverage.

1. a. As a condition of transacting business in this state with small employers, every small employer carrier shall actively offer small employers ~~at least two health benefit plans. Each small employer carrier shall offer one~~ all health benefit plans it actively markets to small employers in this state, including a basic health benefit plan and ~~one~~ a standard health benefit plan.
- b. (1) ~~A~~ Subject to subdivision a of subsection 1, a small employer carrier shall issue a basic any health benefit plan ~~or a standard health benefit plan~~ to any eligible small employer that applies for either the plan and agrees to make the required premium payments and to satisfy the other reasonable provisions of the health benefit plan not inconsistent with this chapter and section 26.1-36-37.2. However, a carrier may not be required to issue a health

benefit plan to a self-employed individual who is covered by, or is eligible for coverage under, a health benefit plan offered by an employer.

- (2) In the case of a small employer carrier that establishes more than one class of business pursuant to section 26.1-36.3-03, the small employer carrier shall maintain and issue to eligible small employers all health benefit plans it actively markets to small employers, including at least one basic health benefit plan and at least one standard health benefit plan in each established class of business. A small employer carrier may apply reasonable criteria in determining whether to accept a small employer into a class of business if the criteria are not intended to discourage or prevent acceptance of small employers applying for a ~~basic or standard~~ health benefit plan, are not related to ~~the health status or claim experience a~~ health status-related factor of the small employer, and are applied consistently to all small employers applying for coverage in the class of business. The small employer carrier shall provide for the acceptance of all eligible small employers into one or more classes of business. This paragraph does not apply to a class of business into which the small employer carrier is no longer enrolling new small businesses.
- e. ~~A small employer is eligible under subdivision b if it employed at least three or more eligible employees within this state on at least fifty percent of its working days during the preceding calendar quarter.~~
 - d. ~~This subsection takes effect one hundred eighty days after the commissioner's approval of the basic health benefit plan and the standard health benefit plan developed pursuant to section 26.1-36.3-08; however, if the small employer health reinsurance program created pursuant to section 26.1-36.3-07 is not yet operative on that date, this section becomes effective on the date the program begins operation.~~
2. a. A small employer carrier shall file with the commissioner, in a format and manner prescribed by the commissioner, the basic health benefit plans and the standard health benefit plans to be used by the carrier. A health benefit plan filed under this subdivision may be used by a small employer carrier beginning sixty days after it is filed unless the commissioner disapproves its use.
 - b. The commissioner after providing notice and an opportunity for a hearing to the small employer carrier, may disapprove, at any time, the continued use by a small employer carrier of a basic or standard health benefit plan if the plan does not meet the requirements of this chapter and section 26.1-36-37.2.
3. Health benefit plans covering small employers must comply with the following:
 - a. A health benefit plan may ~~not deny, exclude, or limit~~ benefits for a ~~covered individual for losses incurred more than twelve months following the effective date of the individual's coverage due to a~~

~~preexisting condition. A health benefit plan may not define a preexisting condition more restrictively than impose a preexisting condition exclusion only if:~~

- ~~(1) A condition for which medical advice, diagnosis, care, or treatment was recommended or received during the six months immediately preceding the effective date of coverage; or The exclusion relates to a condition, regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received within the six-month period immediately preceding the effective date of coverage;~~
 - ~~(2) A pregnancy existing on The exclusion extends for a period of not more than twelve months after the effective date of coverage;~~
 - ~~(3) The exclusion does not relate to pregnancy as a preexisting condition; and~~
 - ~~(4) The exclusion does not treat genetic information as a preexisting condition in the absence of a diagnosis of a condition related to such information.~~
- b. A small employer carrier shall ~~waive~~ reduce any time period applicable to a preexisting condition exclusion or limitation period ~~with respect to particular services for the period of time an individual was previously covered by the aggregate of periods the individual was covered by~~ qualifying previous coverage that provided benefits with respect to the services, if any, if the qualifying previous coverage was continuous until at least ninety-sixty-three days prior to the effective date of the new coverage. The period of continuous coverage may not include a waiting period for the effective date of the new coverage applied by the employer or the carrier. Any waiting period applicable to an individual for coverage under a group health benefit plan may not be taken into account in determining the period of continuous coverage. This subdivision does not preclude application of an employer waiting period applicable to all new enrollees under the health benefit plan. Small employer carriers shall credit coverage by either a standard method or an alternative method. The commissioner shall adopt rules for crediting coverage under the standard and alternative method. These rules must be consistent with the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104-191; 110 Stat. 1936; 29 U.S.C. 1181 et seq.] and any federal rules adopted pursuant thereto.
- c. A health benefit plan may exclude coverage for late enrollees for the greater of eighteen months or for an eighteen-month preexisting condition exclusion; however, if both a period of exclusion from coverage and a preexisting condition exclusion are applicable to a late enrollee, the combined period may not exceed eighteen months from the date the individual enrolls for coverage under the health benefit plan.

- d.
 - (1) Except as provided in this subdivision, a small employer carrier shall apply requirements used to determine whether to provide coverage to a small employer, including requirements for minimum participation of eligible employees and minimum employer contributions, uniformly among all small employers with the same number of eligible employees who are applying for coverage or receiving coverage from the small employer carrier.
 - (2) A small employer carrier may vary application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.
 - (3)
 - (a) Except as provided in subparagraph b, a small employer carrier, in applying minimum participation requirements with respect to a small employer, shall not consider employees or dependents who have qualifying existing coverage in determining whether the applicable percentage of participation is met.
 - (b) With respect to a small employer, with ten or fewer eligible employees, a small employer carrier may consider employees or dependents who have coverage under another health benefit plan sponsored by the small employer in applying minimum participation requirements.
 - (4) A small employer carrier may not increase any requirement for minimum employee participation or any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.
- e.
 - (1) If a small employer carrier offers coverage to a small employer, the small employer carrier shall offer coverage to all of the eligible employees of a small employer and their dependents. A small employer carrier may not offer coverage only to certain individuals in a small employer group or only to part of the group, except in the case of late enrollees as provided in subdivision c.
 - (2) Except as permitted under subsection 1 and this subsection, a small employer carrier may not modify a basic or standard health benefit plan with respect to a small employer or any eligible employee or dependent through riders, endorsements, or otherwise, to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.
4.
 - a. A small employer carrier offering coverage through a network plan is not required to offer coverage or accept applications under subsection 1 to a small employer if:
 - (1) ~~A~~ The small employer who applies for coverage is not physically located in the carrier's established geographic

- service area does not have eligible individuals who live, work, or reside in the service area for such network plan; or
- (2) An employee who applies for coverage does not work or reside within the carrier's established geographic service area; or The small employer does have eligible individuals who live, work, or reside in the service area for the network plan, but the carrier has demonstrated, if required, to the commissioner that it will not have the capacity to deliver services adequately to enrollees of any additional groups because of its obligations to existing group contractholders and enrollees, and that it is applying this paragraph uniformly to all employers without regard to the claims experience of those employers and their employees and their dependents or any health status-related factor relating to such employees and dependents.
- (3) Within an area the small employer carrier reasonably anticipates, and demonstrates to the satisfaction of the commissioner, that, because of its obligations to existing group policyholders and enrollees, it will not have the capacity within its established geographic service area to deliver service adequately to the members of the groups.
- b. A small employer carrier that cannot offer coverage pursuant to paragraph 3 of subdivision a may not offer coverage in the applicable area to new cases of employer groups with more than twenty-five eligible employees or to any small employer groups until the later of one hundred eighty days following each refusal or the date on which the carrier notifies the commissioner that it has regained capacity to deliver services to small employer groups. A small employer carrier, upon denying health insurance coverage in any service area in accordance with paragraph 2 of subdivision a, may not offer coverage in the small employer market within the service area for a period of one hundred eighty days after the date the coverage is denied.
5. A small employer carrier is not required to provide coverage to small employers pursuant to subsection 1 for any period of time for which the commissioner determines that requiring the acceptance of small employers in accordance with the provisions of subsection 4 would place the small employer carrier in a financially impaired condition the carrier does not have the financial reserves to underwrite additional coverage and is applying this section uniformly without regard to the claims experience of small employers or any health status-related factor relating to employees and their dependents. A small employer carrier denying coverage in accordance with this section may not offer coverage in connection with a group health benefit plan in the small group market for a period of one hundred eighty days after the health coverage is denied or until the carrier has demonstrated to the commissioner sufficient financial reserves to underwrite financial coverage, whichever is later.
6. This section does not apply to health benefit plans offered by a small employer carrier if the carrier makes the health benefit plans available in the small employer market only through one or more associations.

SECTION 12. AMENDMENT. Subsection 1 of section 26.1-36.3-11 of the North Dakota Century Code is amended and reenacted as follows:

1. Each small employer carrier shall actively market health benefit plan coverage, including the basic and standard health benefit plans, to eligible small employers in the state. ~~If a small employer carrier denies coverage to a small employer on the basis of the health status or claims experience of the small employer or its employees or dependents, the small employer carrier shall offer the small employer the opportunity to purchase a basic health benefit plan and a standard health benefit plan.~~

SECTION 13. AMENDMENT. Section 26.1-36.4-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36.4-02. Definitions. As used in this chapter, the definitions in section 26.1-36.3-01 apply, unless the context otherwise requires. In addition:

1. "Insurer" means any insurance company, nonprofit health service organization, fraternal benefit society, or health maintenance organization that provides a plan of health insurance or health benefits subject to state insurance regulation.
2. "Policy" means ~~any hospital or medical or major medical policy, certificate, or subscriber contract issued on a group or individual basis by an insurer. The term does not include accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance, coverage issued as a supplement to liability insurance, or automobile medical payment insurance, or a policy or certificate of specified disease, hospital confinement indemnity, limited benefit health insurance, or short-term major medical policies with policy terms no longer than twelve months~~ health benefit plan as defined in section 26.1-36.3-01, whether offered on a group or individual basis. The term does not include short-term major medical policies offered in the individual market.
3. "Short-term", except as required by the Health Insurance Portability and Accountability Act of 1996, means a policy or plan providing coverage for one hundred eighty-five days or less.

SECTION 14. AMENDMENT. Section 26.1-36.4-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36.4-03. Limits on preexisting ~~conditions~~ ~~provisions~~ condition exclusions. ~~A policy must provide coverage, with respect to a disease or physical condition of a person which existed prior to the effective date of the person's coverage under the policy, except for a preexisting disease or physical condition that was diagnosed or treated within the six months immediately prior to the effective date of the person's coverage. The limitation may not apply to loss incurred after the end of the twelve-month period commencing on the effective date of the person's coverage. An insurer may impose a preexisting condition exclusion only if:~~

1. The exclusion relates to a condition, regardless of the cause of the condition, for which medical diagnosis, care, or treatment was recommended or received within the six-month period ending on the effective date of the person's coverage.

2. The exclusion extends for a period of not more than twelve months after the effective date of coverage.

SECTION 15. Section 26.1-36.4-03.1 of the North Dakota Century Code is created and enacted as follows:

26.1-36.4-03.1. Additional limits on preexisting condition exclusions. A group policy may not impose a preexisting condition exclusion that:

1. Relates to pregnancy as a preexisting condition.
2. Treats genetic information as a preexisting condition in the absence of a diagnosis of a condition related to such information.

SECTION 16. AMENDMENT. Section 26.1-36.4-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36.4-04. Portability of insurance policies. An insurer shall waive reduce any time period applicable to a preexisting condition, for a policy with respect to particular services for the period of time an individual was previously covered by the aggregate of periods the individual was covered by qualifying previous coverage that provided benefits with respect to the services, if the qualifying previous coverage as defined in section 26.1-36.3-01 is continuous until at least ninety sixty-three days before the effective date of the new coverage. The period of continuous coverage may not include a waiting period or the effective date of the new coverage applied by the insurer. Any waiting period applicable to an individual for coverage under a health benefit plan may not be taken into account in determining the period of continuous coverage. Insurers shall credit coverage in the same manner as provided by section 26.1-36.3-06 and the rules adopted by the commissioner pursuant thereto.

SECTION 17. AMENDMENT. Section 26.1-36.4-05 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36.4-05. Guaranteed renewability of health insurance coverage - Discrimination prohibited.

4. An insurer issuing policies under this chapter shall provide for the renewability or continuability of coverage unless:
 - a. The individual or group has failed to pay the required premiums.
 - b. The individual or group has misrepresented information or committed fraud with respect to coverage of the individual or group.
 - c. The group has failed to comply with the insurer's minimum participation requirements.
 - d. The insurer has elected to nonrenew all of its policies, other than guaranteed renewable individual policies, in this state. In that case the insurer shall:
 - (1) Provide advance notice of its decision not to renew to the commissioner; and

- ~~(2)~~ Provide notice of the decision not to renew coverage to every affected insured and to the commissioner at least one hundred eighty days before the nonrenewal of the policy or contract by the insurer. Notice to the commissioner under this paragraph must be provided at least three business days before notice to an affected insured.
- ~~2.~~ An insurer that elects not to renew a policy as required by this section may not write new business in the individual or group market in this state for a period of five years from the date of notice of its intention not to renew.
- ~~3.~~ The commissioner may allow an insurer to nonrenew a policy if the commissioner finds that continuation of coverage is not in the best interests of policyholders or it would impair the insurer's ability to meet its contractual obligations. The commissioner shall assist the policyholder in finding replacement coverage.
1. An insurer issuing policies or certificates under this chapter shall provide for the renewability or continuability of coverage unless:
- a. The individual or group has failed to pay premiums or contributions in accordance with the terms of the health benefit plan or the insurer has not received timely premium payments.
 - b. The individual or group has performed an act or practice that constitutes fraud or made an intentional misrepresentation of a material fact under the terms of the coverage.
 - c. Noncompliance with the insurer's minimum group participation requirements.
 - d. Noncompliance with the insurer's employer group contribution requirements.
 - e. A decision by the insurer to discontinue offering a particular type of health insurance coverage in the group or individual market. A type of group health benefit plan or individual policy may be discontinued by the insurer in that market only if the insurer:
 - (1) Provides advance notice of its decision under this paragraph to the commissioner in each state in which it is licensed;
 - (2) Provides notice of the decision not to renew coverage to all affected individuals, employers, participants, beneficiaries, and to the commissioner in each state in which an affected insured is known to reside at least ninety days prior to the nonrenewal of any health benefit plans by the insurer. Notice to the commissioner under this subdivision must be provided at least three working days prior to the notice to the affected individuals, employers, participants, and beneficiaries;
 - (3) Offers to each affected group or individual the option to purchase all other health benefit plans or individual coverage currently being offered by the insurer in that market; and

- (4) In exercising the option to discontinue the particular type of group health benefit plan or individual coverage and in offering the option of coverage under paragraph 3, the insurer acts uniformly without regard to claims experience or any health status-related factor relating to any affected individuals, participants, or beneficiaries covered or new individuals, participants, or beneficiaries who may become eligible for such coverage.
 - f. A decision by the insurer to discontinue offering and to nonrenew all its health benefit plans or individual coverage delivered or issued for delivery to employers or individuals in this state. In such a case, the insurer shall:
 - (1) Provide advance notice of its decision under this paragraph to the commissioner in each state in which it is licensed;
 - (2) Provides notice of the decision not to renew coverage to all affected individuals, employers, participants, and beneficiaries, and to the commissioner in each state in which an affected insured is known to reside at least one hundred eighty days prior to the nonrenewal of any health benefit plans by the insurer. Notice to the commissioner under this subdivision must be provided at least three working days prior to the notice to the affected individuals, employers, participants, and beneficiaries; and
 - (3) Discontinue all health insurance issued or delivered for issuance in the state's group or individual market and not renew such health coverage in that market.
 - g. In the case of health benefit plans that are made available in the group or individual market only through one or more associations, the membership of an employer or individual in the association, on the basis of which the coverage is provided, ceases, but only if the coverage is terminated under this paragraph uniformly without regard to any health status-related factor relating to any covered individual.
 - h. The commissioner finds that the continuation of the coverage would not be in the best interests of the policyholders or certificate holders or would impair the insurer's ability to meet its contractual obligations. In this case the commissioner shall assist affected insureds in finding replacement coverage.
2. An insurer that elects not to renew a health benefit plan under subdivision f of subsection 1 may not write new business in the applicable market in this state for a period of five years from the date of notice to the commissioner.
 3. In the case of an insurer doing business in one established geographic service area of the state, this section only applies to the insurer's operations in that service area.

4. An insurer offering coverage through a network plan may not be required to offer coverage or accept applications pursuant to subsection 1 or 2 in the case of the following:
 - a. To an eligible person who no longer resides, lives, or works in the service area, or in an area for which the insurer is authorized to do business, but only if coverage is terminated under this subdivision uniformly without regard to any health status-related factor; or
 - b. To an insurer that no longer has any enrollee in connection with the plan who lives, resides, or works in the service area of the insurer, or the area for which the insurer is authorized to do business.
5. At the time of coverage renewal, an insurer may modify the health insurance coverage for a product offered to a group or individual, if the modification is consistent with state law and effective on a uniform basis.

SECTION 18. REPEAL. Section 26.1-08-05 of the North Dakota Century Code is repealed.

SECTION 19. APPLICATION. Except as required by the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104-191; 110 Stat. 1936; 29 U.S.C. 1181 et seq.], this Act applies to:

1. Any health insurance coverage that is offered, sold, issued, or renewed in the individual market after June 30, 1997; and
2. Any group health benefit plan, and health insurance coverage offered in connection with a group health benefit plan, for any plan year beginning after June 30, 1997.

SECTION 20. EFFECTIVE DATE. This Act becomes effective on July 1, 1997.

SECTION 21. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 11, 1997
Filed April 11, 1997

CHAPTER 252

HOUSE BILL NO. 1259 (Representative Berg) (Senator Mutch)

MUTUAL INSURANCE COMPANY REORGANIZATION

AN ACT to create and enact chapter 26.1-12.1 of the North Dakota Century Code, relating to the reorganization of mutual insurance companies and formation by mutual insurance companies of mutual insurance holding companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 26.1-12.1 of the North Dakota Century Code is created and enacted as follows:

26.1-12.1-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Commissioner" means the commissioner of insurance.
2. "Eligible member" means a policyholder whose policy is in force as of the record date or member as defined under the bylaws or articles of incorporation of the reorganizing insurer. Unless otherwise provided in the reorganization plan, a person insured under a certificate issued under a group policy is not an eligible member.
3. "Membership interest" means all eligible members of the reorganizing insurer, including rights to vote and to participate in any distribution of surplus, whether or not incident to the company's liquidation.
4. "Mutual insurance company" means a mutual insurance company incorporated under the laws of this state pursuant to chapter 26.1-12 or other prior provisions of this title.
5. "Mutual insurance holding company" means a company formed under section 26.1-12.1-02.
6. "Plan of reorganization" means a plan to engage or participate in a reorganization subject to this chapter.
7. "Policy" means a policy or contract of insurance issued by a mutual insurance company, including an annuity contract.
8. "Record date" means the date the reorganizing insurer's board of directors adopts a plan of reorganization or some other date specified as the record date in the plan of reorganization and approved by the commissioner.
9. "Reorganization" means any plan or transaction described in section 26.1-12.1-02 or 26.1-12.1-03, or any change in the reorganized insurer's articles of incorporation or bylaws which is a material change to the plan of reorganization filed and approved by the commissioner affecting

the ability of the reorganizing insurer to meet the standards described in section 26.1-12.1-06.

10. "Reorganized insurance company" means a mutual insurance company that has completed a reorganization to a stock company that is subject to this chapter.
11. "Reorganizing insurer" means a mutual insurance company seeking to participate, or participating, in merger or other reorganization as defined in this chapter.

26.1-12.1-02. Mutual insurance holding company - Formation. A domestic mutual insurance company, upon approval of the commissioner, may reorganize by forming an insurance holding company based upon a mutual plan and continuing the corporate existence of the reorganizing insurer as a stock insurance company. The commissioner, if satisfied the reorganization meets the standards set forth in section 26.1-12.1-06, may approve the proposed plan of reorganization or may require as a condition of approval the modification of the proposed plan of reorganization as the commissioner finds necessary for the plan to meet the standards of section 26.1-12.1-06. The commissioner shall retain jurisdiction over the mutual insurance holding company and the reorganized insurer according to this section and chapter 26.1-10 to assure that policyholders' and members' interests are protected.

All of the initial shares of the capital stock of the reorganized insurer must be issued to the mutual insurance holding company or to an intermediate stock holding company that is wholly owned by the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurer must be converted into membership interests in the mutual insurance holding company. Policyholders of the reorganizing insurance company must become members of the mutual insurance holding company in accordance with the articles of incorporation and bylaws of the mutual insurance holding company and the articles of incorporation and bylaws of the reorganized insurance company as approved by the commissioner. The mutual insurance holding company, directly or indirectly through an intermediate stock holding company, must control at all times a majority of the voting shares of the capital stock of the reorganized insurance company but this does not prohibit any future demutualization or other conversion.

26.1-12.1-03. Mutual insurance holding company - Merger. A domestic mutual insurance company, upon the approval of the commissioner, may reorganize by merging its policyholders' member interests into a mutual insurance holding company formed according to section 26.1-12.1-02 and continuing the corporate existence of the reorganizing insurer as a stock insurance company subsidiary of the mutual insurance holding company. The commissioner, if satisfied that the reorganization meets the standards in section 26.1-12.1-06, may approve the proposed merger or may require as a condition of approval the modification of the proposed merger as the commissioner finds necessary for the merger to meet the standards in section 26.1-12.1-06. The commissioner shall retain jurisdiction over the mutual insurance holding company and the reorganized insurer organized according to this section to assure that the policyholders' and members' interests are protected.

All of the initial shares of the capital stock of the reorganized insurance company must be issued to the mutual insurance holding company, or to an intermediate stock holding company that is wholly owned by the mutual insurance holding company. The membership interests of the policyholders of the reorganizing

insurer must be converted into membership interests in the mutual insurance holding company. Policyholders of the reorganized insurance company must become members of the mutual insurance holding company according to the articles of incorporation and bylaws of the mutual insurance holding company. A merger as contemplated by this section is not subject to chapter 26.1-07.

26.1-12.1-04. Plan of reorganization - Contents. No insurer authorized to do business in this state may take part in a reorganization unless the reorganization has first been approved by the commissioner in accordance with this chapter. A reorganizing insurer shall file a plan of reorganization consistent with the requirements of this section, approved by the affirmative vote of a majority of its board of directors, for review and approval by the commissioner. The plan must include:

1. A description of the nature and content, or a copy, of the annual report and financial statement to be sent to each eligible member.
2. An analysis of the benefits and risks attendant to the proposed reorganization, including the rationale for the reorganization and analysis of the comparative benefits and risks to the reorganizing insurer of the reorganization.
3. Information sufficient to demonstrate the financial condition of the reorganizing insurer will not be affected adversely upon reorganization.
4. Information demonstrating that the reorganization will:
 - a. Establish a mutual insurance holding company with at least one stock insurance company subsidiary, the majority of whose shares must be owned, either directly or through an intermediate stock holding company, by the mutual insurance holding company;
 - b. Ensure immediate membership in the mutual insurance holding company of all existing eligible members of the reorganizing mutual insurance company;
 - c. Describe a plan providing for membership interest of future policyholders;
 - d. Include a copy of the proposed mutual insurance holding company's articles of incorporation and bylaws specifying all membership rights;
 - e. Include a copy of the articles of incorporation and bylaws of the reorganizing insurer, any proposed insurance company subsidiary, or intermediate holding company subsidiary; and
 - f. Describe the number of members of the board of directors of the mutual insurance holding company required to be policyholders.
5. Information demonstrating that upon an insolvency involving a stock insurance company subsidiary of the mutual insurance holding company that resulted from the reorganization, the assets of the mutual holding company will be available to satisfy the policyholder obligations of the stock insurance company.

6. Information describing the mutual insurance holding company's general plans regarding whether any accumulation or prospective accumulation of earnings by the mutual insurance holding company which is or would be in excess of that determined by the board of directors of the mutual insurance holding company to be necessary will inure to the exclusive benefit of the policyholders of its insurance company subsidiaries who are members.

26.1-12.1-05. Retention of experts. The commissioner may retain, at the reorganizing insurer's reasonable expense, any qualified experts if the commissioner determines that staff not otherwise a part of the commissioner's staff is necessary to assist in reviewing the plan.

26.1-12.1-06. Hearing by commissioner - General duties. The commissioner shall conduct a public hearing regarding a proposed reorganization plan within sixty days after submission of a completed plan of reorganization to the commissioner, unless the commissioner and reorganizing insurer agree to extend the sixty days or unless the commissioner and the reorganizing insurer, based upon the facts and circumstances of the transaction, agree that a hearing may be waived. If a hearing is held, the commissioner shall give the reorganizing insurer at least twenty days' notice of the hearing. At the hearing, the reorganizing insurer, its policyholders, and any other person whose interests may be affected by the proposed reorganization, may present evidence, examine and cross-examine witnesses, and offer oral and written arguments and comments according to the procedure for contested cases under chapter 28-32. The commissioner, in making the determination as to a plan of reorganization under this chapter, shall consider whether:

1. The reorganizing insurer's surplus in regard to policyholders following a plan of reorganization is reasonable in relation to the reorganizing insurer's outstanding liabilities and adequate to its financial needs;
2. Under a plan of reorganization that materially affects the membership interest of eligible members in the reorganizing insurer, the eligible members will receive a membership interest in a mutual holding company commensurate with an equitable share of the value of the reorganizing insurer;
3. After the reorganization, the reorganized insurance company will be able to satisfy the requirements for the issuance of a certificate of authority to write the lines of insurance for which it was licensed before the reorganization; and
4. The plan of the reorganization is fair, reasonable, and equitable to the policyholders of the reorganizing insurer.

26.1-12.1-07. Action by commissioner. Within sixty days after the conclusion of the public hearing, or within the sixty days after filing the plan of reorganization if by mutual agreement the hearing is waived, unless there is a mutual agreement by the commissioner and the reorganizing insurer to extend such time, the commissioner shall enter findings of fact, conclusions of law, and an order either approving, conditionally approving, or disapproving the plan. An approval or conditional approval of a plan of reorganization expires if the reorganization is not completed within one hundred eighty days after the approval or conditional approval, unless the time period is extended by the commissioner upon a showing of good cause.

26.1-12.1-08. Notice to eligible members. Following approval or conditional approval of the plan by the commissioner, all eligible members shall be given notice of a regular or special meeting of the policyholders called for the purpose of considering the plan and any corporate action that is a part of, or is reasonably attendant to, the accomplishment of the plan. A copy of the plan or a summary of the plan must accompany the notice. A notice approved by the commissioner must be mailed to each eligible member's last known address, as shown on the reorganizing insurer's records, within forty-five days of the commissioner's approval of the plan, unless the commissioner directs an earlier date for mailing. The meeting to vote upon a plan of reorganization must be set for a date no less than forty-five days after the date when the notice of the meeting is mailed by the reorganizing insurer, unless the commissioner directs an earlier date for the meeting. If the meeting to vote upon the plan of reorganization is held coincident with the reorganizing insurer's annual meeting of policyholders or members, only one combined notice of meeting is required. If the reorganizing insurer complies substantially and in good faith with the notice requirements of this section, the reorganizing insurer's failure to give any member or members any required notice does not impair the validity of any action taken under this section.

26.1-12.1-09. Approval by eligible members. The plan of reorganization must be adopted upon receiving the affirmative vote of a majority of the votes cast by eligible members. Eligible members may vote in person or by proxy. The form of any proxy along with a copy or summary of the plan which accompanied the notice to eligible members must be filed with and approved by the commissioner. The number of votes each eligible member may cast must be determined by the converting reorganizing insurer's bylaws. If the bylaws are silent, each eligible member may cast one vote. The plan must be approved as follows:

1. In the case of formation of a mutual insurance holding company under section 26.1-12.1-02, the reorganization plan must be approved by the affirmative vote of a majority of the votes cast by no less than ten percent of the eligible members of the reorganizing insurer; and
2. In the case of a merger under section 26.1-12.1-03, the reorganization plan must be approved by an affirmative vote of a majority of the votes cast by no less than ten percent of the eligible members of the reorganizing insurer and by an affirmative vote of a majority of the votes cast by no less than ten percent of the eligible members of the mutual insurance holding company into which the policyholders' membership interests are to be merged, provided that the vote of the eligible members of the mutual insurance holding company may not be required if the commissioner determines that the merger would not be material to the financial condition of the mutual insurance holding company.

26.1-12.1-10. Applicability of certain provisions. A mutual insurance holding company is deemed to be an insurer subject to chapter 26.1-06.1 and is automatically a mandatory party to any proceeding under that chapter involving an insurance company that, as a result of a reorganization according to section 26.1-12.1-02 or section 26.1-12.1-03, is a subsidiary of the mutual insurance holding company. In any proceeding under chapter 26.1-06.1 involving the reorganized insurance company, the assets of the mutual insurance holding company are considered to be the assets of the estate of the reorganized insurance company for purposes of satisfying the claims of the reorganized insurance company's policyholders. A mutual insurance holding company may not dissolve or liquidate without the approval of the commissioner or as ordered by the district court

according to chapter 26.1-06.1. Section 26.1-12-32 is not applicable to a reorganization or merger accomplished under this chapter.

26.1-12.1-11. Membership interest. A membership interest in a domestic mutual insurance holding company does not constitute a security as defined in subsection 13 of section 10-04-02. No member of a mutual insurance holding company may transfer or pledge membership in the mutual insurance holding company or any right arising from the membership except as attendant to the valid transfer or assignment of the member's policy in any reorganized insurer which gave rise to the member's membership interest. A member of a mutual insurance holding company is not, as a member, personally liable for the acts, debts, liabilities, or obligations of the reorganized insurer. No assessment of any kind may be imposed upon the members of a mutual insurance holding company by the directors or members, or because of any liability of any company owned or controlled by the mutual insurance holding company, or because of any act, debt, or liability of the reorganized company. A member's interest in the mutual insurance holding company automatically terminates upon cancellation, nonrenewal, expiration, or termination of the member's policy in any reorganized company which gave rise to the member's membership interest.

26.1-12.1-12. Sale of stock and payment of dividends. No solicitation for the sale of any of the stock of the reorganized insurer, or of an intermediate stock holding company of the mutual insurance holding company, may be made without the commissioner's prior written approval. Dividends and other distributions to the shareholders or members of the reorganized mutual insurance company or of an intermediate stock holding company may not be made except in compliance with sections 26.1-10-05 and 26.1-10-05.1.

26.1-12.1-13. Incorporation. A mutual insurance holding company resulting from the reorganization of a domestic mutual insurance company must be incorporated under chapter 10-19.1. The articles of incorporation of the mutual insurance holding company are subject to approval of the commissioner in the same manner as those of an insurance company.

26.1-12.1-14. Applicability. This chapter does not apply to any mutual insurance company that was formerly organized as a nonprofit health service corporation.

Approved April 3, 1997
Filed April 3, 1997

CHAPTER 253

SENATE BILL NO. 2270

(Senators Lips, DeMers)
(Representatives Kilzer, Wald)

NONPROFIT HEALTH SERVICE CORPORATION CONVERSION

AN ACT to create and enact a new subsection to section 26.1-17-33.1 of the North Dakota Century Code, relating to nonprofit mutual insurance companies; to amend and reenact section 26.1-17-33.1 of the North Dakota Century Code, relating to the conversion of a nonprofit health service corporation to a nonprofit mutual insurance company; to provide for retroactive application; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-17-33.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-17-33.1. Nonprofit health service corporation - Conversion to nonprofit mutual insurance company - Application of law.

1. Any nonprofit health service corporation organized under chapter 26.1-17, having admitted assets in excess of all liabilities at least equal to the original surplus required of a mutual insurance company by section 26.1-12-10, without reincorporation, and upon adoption of a resolution by its board of directors, may petition the commissioner of insurance for an order to become a nonprofit mutual insurance company subject to chapter 26.1-12. For the purpose of obtaining approval from the commissioner of insurance, conversion to a nonprofit mutual insurance company under this section is deemed a consolidation pursuant to chapter 26.1-07 and the procedure described therein must be followed.
2. Upon becoming subject to chapter 26.1-12, the company may continue to provide health care and related services to its present or future members and subscribers by health care contracts and may make provision for the payment of health care services directly to hospitals and other agencies or institutions or persons rendering health care services or related services or may make direct payment to the member or subscriber. The conversion of a nonprofit health service corporation into a mutual insurance company must not impair the rights or obligations or any existing contractual rights of a health care service corporation or its members. Except as provided in this section, the laws that apply to mutual insurance companies, and insurance companies generally, apply to a nonprofit mutual insurance company converted from a nonprofit health service corporation pursuant to this section.
3. The nonprofit corporation laws apply to the operation and control of a nonprofit mutual insurance company converted from a nonprofit health service corporation under this section and supersede any conflicting provisions in title 26.1 unless title 26.1 is more restrictive. Except as

authorized in subsections 4 and 5, a nonprofit mutual insurance company may not sell, lease, transfer, or dispose of all or substantially all property or assets, and may not merge or consolidate with, or acquire, a stock insurance company or agency, for-profit subsidiary, or any other corporation. Except as provided in subsection 5, a nonprofit mutual insurance company may not pay dividends or issue stock.

4. The funds of a nonprofit mutual insurance company may be invested in those investments authorized to be made by domestic insurance companies under section 26.1-05-19, as limited by section 26.1-05-18.
5. A nonprofit mutual insurance company may form a stock insurance company for the purpose of administering medicare claims.
6. A nonprofit mutual insurance company may not demutualize or be converted to a for-profit mutual or stock company.
7. A nonprofit mutual insurance company may not avail itself of the additional investment authority under chapter 26.1-10.
8. A conversion of a nonprofit health service corporation to a nonprofit mutual insurance company under this section, to the extent that any assets of the nonprofit health service corporation are impressed with a charitable trust immediately before the conversion, does not give rise to a breach of the charitable trust or violate any fiduciary duty laws, and does not constitute grounds for disapproval of either the petition to convert to a nonprofit mutual insurance company or the articles of incorporation of the company under section 26.1-12-04. The conversion authorized by this section does not diminish the application of charitable trust or fiduciary duty laws that may apply to the company immediately before the conversion.
9. A nonprofit mutual insurance company may not engage in the practice of medicine, dentistry, optometry, or any other profession for which a license or registration is required.
10. Every nonprofit mutual insurance company is a charitable and benevolent organization and the laws of this state relating to and affecting nonprofit charitable and benevolent corporations are applicable to all nonprofit mutual insurance companies.

SECTION 2. A new subsection to section 26.1-17-33.1 of the North Dakota Century Code is created and enacted as follows:

A nonprofit mutual insurance company may not form a mutual insurance holding company.

SECTION 3. RETROACTIVE APPLICATION OF ACT. This Act applies retroactively to any conversion from a nonprofit health service corporation to a nonprofit mutual insurance company or a petition to convert or procedure for conversion from a nonprofit health service corporation to a nonprofit mutual insurance company under section 26.1-17-33.1 which occurs before the effective date of this Act.

SECTION 4. EFFECTIVE DATE. Section 2 of this Act becomes effective when 1997 House Bill No. 1259 becomes effective.

Approved April 2, 1997

Filed April 3, 1997

CHAPTER 254

HOUSE BILL NO. 1428 (Representatives Henegar, Kilzer)

OFF-LABEL DRUG USE COVERAGE

AN ACT to create and enact a new section to chapter 26.1-36 of the North Dakota Century Code, relating to coverage for off-label uses of drugs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Coverage for off-label uses of drugs.

1. In this section:
 - a. "Coverage of a drug" includes medically necessary services associated with the administration of the drug.
 - b. "Medical literature" means scientific studies published in a peer review national medical journal.
 - c. "Off-label use of drugs" means prescribing drugs for treatments other than those stated in the labeling approved by the federal food and drug administration.
 - d. "Standard reference compendia" means the United States pharmacopeia drug information or American hospital formulary service drug information.
2. An insurance company, nonprofit health service corporation, or health maintenance organization that provides coverage for drugs may not issue, deliver, execute, or renew any health insurance policy or health service contract on an individual, group, blanket, franchise, or association basis which excludes coverage of a drug for a particular indication on the grounds the drug has not been approved by the federal food and drug administration for that indication if the drug is recognized for treatment of the indication in one of the standard reference compendia or medical literature.
3. The commissioner of insurance may direct an insurer or contractor regulated by this section to make payments as required by this section.
4. The state health officer may appoint a panel of up to eight qualified medical experts to review off-label uses of drugs not included in the standard reference compendia or medical literature. This panel shall advise the commissioner of insurance whether a particular off-label use is medically appropriate and shall make recommendations regarding payment of off-label use.

5. This section does not alter existing law regarding provisions limiting the coverage of drugs that have not been approved by the federal food and drug administration; does not require coverage for any drug when the federal food and drug administration has determined its use to be contraindicated; and does not require coverage for experimental drugs not otherwise approved for any indication by the federal food and drug administration.

Approved March 25, 1997

Filed March 25, 1997

CHAPTER 255

SENATE BILL NO. 2040

(Legislative Council)

(Insurance and Health Care Committee)

(Senators Mathern, Thane, Lee)

(Representatives Glassheim, Mahoney)

MENTAL DISORDER COVERAGE

AN ACT to amend and reenact section 26.1-36-09 of the North Dakota Century Code, relating to group health policy and health service contract mental disorder coverage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

² **SECTION 1. AMENDMENT.** Section 26.1-36-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36-09. Group health policy and health service contract mental disorder coverage.

1. An insurance company, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy or health service contract on a group or blanket or franchise or association basis unless the policy or contract provides benefits, of the same type offered under the policy or contract for other illnesses, for health services to any person covered under the policy or contract, for the diagnosis, evaluation, and treatment of mental disorder and other related illness, which benefits meet or exceed the benefits provided in subsection 2.
2.
 - a. The benefits must be provided for inpatient treatment ~~and~~, treatment by partial hospitalization, residential treatment, and outpatient treatment.
 - b. In the case of benefits provided for inpatient treatment, the benefits must be provided for a minimum of sixty days of services covered under this section and section 26.1-36-08 in any calendar year if provided by a hospital as defined in subsection 25 of section 52-01-01 and rules of the state department of health pursuant thereto offering treatment for the prevention or cure of mental disorder or other related illness.
 - c. In the case of benefits provided for partial hospitalization or residential treatment, the benefits must be provided for a minimum of one hundred twenty days of services covered under this section and section 26.1-36-08 in any calendar year if provided by a

² Section 26.1-36-09 was also amended by section 1 of House Bill No. 1161, chapter 379.

hospital as defined in subsection 25 of section 52-01-01 and rules of the state department of health pursuant thereto or by a regional human service center licensed under section 50-06-05.2, offering treatment for the prevention or cure of mental disorder or other related illness, or by a residential treatment program. For services provided in regional human service centers, charges must be reasonably similar to the charges for care provided by hospitals as defined in this subsection.

- d. Benefits ~~may also~~ must be provided for a combination of inpatient ~~and hospitalization~~, partial hospitalization, and residential treatment. For the purpose of computing the period for which benefits are payable, each day of inpatient treatment is equivalent to two days of treatment by partial hospitalization or residential treatment; provided, however, that no more than forty-six days of the inpatient treatment benefits required by this section may be traded for treatment by partial hospitalization or residential treatment.
- e. (1) In the case of benefits provided for outpatient treatment, the benefits must be provided for a minimum of thirty hours for services covered under this section in any calendar year if the treatment services are provided within the scope of licensure by a nurse who holds advanced licensure with a scope of practice within mental health or if the diagnosis, evaluation, and treatment services are provided within the scope of licensure by a licensed physician, a licensed psychologist who is eligible for listing on the national register of health service providers in psychology, or a licensed certified social worker who:
- (a) Possesses a master's or doctorate degree in social work from an institution accredited by the council of social work education;
 - (b) Has at least one year of direct clinical social work practice during graduate school or one year of postgraduate supervised clinical social work practice in a structured teaching environment;
 - (c) Has completed at least the equivalent of four years of full-time supervised clinical social work experience within the last seven years;
 - (d) Has passed the clinical examination or its equivalent offered by the North Dakota board of social work examiners; and
 - (e) If not licensed in this state, is licensed, certified, or registered at the highest level of social work practice in another state.
- (2) A person who is qualified for third-party payment by the board of social work examiners on August 1, 1995, is exempt from subparagraphs c and d. Supervision under subparagraph c may be provided by a qualified clinical social

- worker, a licensed psychologist, or a licensed psychiatrist, but the preferred supervisor is the qualified clinical social worker.
- (3) Upon the request of an insurance company, a nonprofit health service corporation, or a health maintenance organization the North Dakota board of social work examiners shall provide to the requesting entity information to certify that a licensed certified social worker meets the qualifications required under this section.
 - (4) The insurance company, nonprofit health service corporation, or health maintenance organization may not establish a deductible or a copayment for the first five hours in any calendar year, and may not establish a copayment greater than twenty percent for the remaining hours.
 - (5) If the services are provided by a provider outside a preferred provider network without a referral from within the network, the insurance company, nonprofit health service corporation, or health maintenance organization may establish a copayment greater than twenty percent for only those hours after the first five hours in any calendar year.
- f. "Partial hospitalization" means continuous treatment for at least three hours, but not more than twelve hours, in any twenty-four-hour period and includes the medically necessary treatment services provided by licensed professionals under the supervision of a licensed physician.
 - g. "Residential treatment" has the same meaning as provided in section 25-03.2-01.
3. This section does not prevent any insurance company, nonprofit health service corporation, or health maintenance organization from issuing, delivering, or renewing, at its option, any policy or contract containing provisions similar to those required by this section, where the policy or contract is not subject to such provisions.

Approved March 25, 1997

Filed March 26, 1997

CHAPTER 256**SENATE BILL NO. 2115**

(Senator Nalewaja)
(Representative Hausauer)

PROSTATE-SPECIFIC ANTIGEN TEST COVERAGE

AN ACT to create and enact a new section to chapter 26.1-36 of the North Dakota Century Code, relating to insurance coverage for prostate-specific antigen tests.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Health insurance policy and health service contract - Prostate-specific antigen test coverage. An insurance company, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy, health service contract, or evidence of coverage on an individual, group, blanket, franchise, or association basis unless the policy, contract, or evidence of coverage provides an annual digital rectal examination and a prostate-specific antigen test for an asymptomatic male aged fifty and over, a black male aged forty and over, and a male aged forty or over with a family history of prostate cancer.

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 257

SENATE BILL NO. 2194

(Senators W. Stenehjem, Holmberg, Lee)
(Representatives Delmore, Kliniske, Poolman)

INHERITED METABOLIC DISEASE COVERAGE

AN ACT to create and enact a new section to chapter 26.1-36 of the North Dakota Century Code, relating to health insurance coverage for inherited metabolic disease; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Foods and food products for inherited metabolic diseases.

1. As used in this section:
 - a. "Inherited metabolic disease" means maple syrup urine disease or phenylketonuria.
 - b. "Low protein modified food product" means a food product that is specially formulated to have less than one gram of protein per serving and is intended to be used under the direction of a physician for the dietary treatment of an inherited metabolic disease. The term does not include a natural food that is naturally low in protein.
 - c. "Medical food" means a food that is intended for the dietary treatment of a disease or condition for which nutritional requirements are established by medical evaluation and is formulated to be consumed or administered under the direction of a physician.
2. An insurance company, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy, health service contract, or evidence of coverage that provides prescription coverage on an individual, group, blanket, franchise, or association basis, unless the policy or contract provides, for any person covered under the policy or contract, coverage for medical foods and low protein modified food products determined by a physician to be medically necessary for the therapeutic treatment of an inherited metabolic disease.
3. This section applies to any covered individual born after December 31, 1962. This section does not require coverage for low protein modified food products in excess of three thousand dollars per year for an individual with an inherited metabolic disease of amino acid or organic acid.

SECTION 2. EXPIRATION DATE. This Act is effective through July 31, 1999, and after that date is ineffective.

Approved April 11, 1997

Filed April 11, 1997

CHAPTER 258

SENATE BILL NO. 2043

(Legislative Council)
(Insurance and Health Care Committee)
(Senators Mathern, DeMers, Thane)
(Representatives Glassheim, Wald, R. Kelsch)

MOTHER AND NEWBORN POSTDELIVERY COVERAGE

AN ACT to create and enact a new section to chapter 26.1-36 of the North Dakota Century Code, relating to health insurance coverage for mothers and newborns.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Health insurance policy and health service contract - Postdelivery coverage for mothers and newborns.

1. An insurance company, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy, health service contract, or evidence of coverage that provides maternity benefits on an individual, group, blanket, franchise, or association basis unless the policy, contract, or evidence of coverage provides benefits, of the same type offered under the policy or contract for illnesses, for health services to any person covered under the policy or contract for:
 - a. Inpatient care for at least forty-eight hours for a mother and her newborn child following a normal vaginal delivery, and inpatient care for at least ninety-six hours following a caesarean section, without requiring the attending physician or health care provider to obtain authorization to care for a mother and her newborn child in the inpatient setting for this period of time.
 - b. Inpatient care in excess of forty-eight hours following a vaginal delivery and ninety-six hours following a caesarean section if the stay is determined to be reasonable and medically necessary.
2. Coverage is not required for postdelivery inpatient care for a covered mother and her newborn child during the entire minimum time period required under subdivision a of subsection 1 if:
 - a. The attending physician or health care provider, in consultation with the mother, decides to discharge the mother and her newborn child early; and
 - b. The mother and her newborn child meet the minimum medical criteria for discharge as recommended in the "Guidelines for

Perinatal Care" prepared by the American college of obstetricians and gynecologists and the American academy of pediatrics.

3. A person covered under this section is not required to give birth in a hospital or stay in a hospital for a fixed period of time following the birth of her child or participate in any postdelivery visit.
4. An insurance company, nonprofit health service corporation, health maintenance organization, or provider may not:
 - a. Provide monetary payments or rebates to any insured person to request less than the minimum coverage required under this section;
 - b. Penalize or otherwise reduce or limit the reimbursement of an attending physician or health care provider for recommending or providing care that is covered under this section;
 - c. Waive any deductible, coinsurance, or copayment requirement for providing the minimum coverage required under this section;
 - d. Deny to the mother or newborn child eligibility or continued eligibility to enroll or to renew coverage under the terms of the plan solely to avoid the requirements of this section; or
 - e. Provide incentives, monetary or otherwise, to an attending physician or health care provider to induce the physician or provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section.
5. The coverage required under subsection 1 may not exceed policy aggregate limits for this coverage.
6. This section does not prevent an insurance company, nonprofit health service corporation, or health maintenance organization from imposing deductibles, coinsurance, or other cost sharing in relation to benefits for hospital lengths of stay relating to childbirth for a mother or newborn child under the plan.

SECTION 2. NOTIFICATION OF COVERAGE. Before February 1, 1998, every insurance company, nonprofit health service corporation, and health maintenance organization subject to this Act shall provide written notice of a material change in coverage under section 1 of this Act to every policyholder or certificate holder affected by the change.

Approved April 17, 1997
Filed April 17, 1997

CHAPTER 259**HOUSE BILL NO. 1249**

(Representative Keiser)

STRUCTURE INSURANCE COVERAGE

AN ACT to create and enact a new subsection to section 26.1-39-05 of the North Dakota Century Code, relating to insurance coverage on structures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 26.1-39-05 of the North Dakota Century Code is created and enacted as follows:

This section does not apply to any claim for loss of an appurtenant structure or separate structure. Any claim for loss of an appurtenant or separate structure must be settled for actual replacement cost or actual cash value, depending on the policy provisions applicable to the structure, unless an appurtenant or separate structure is individually described in the policy and a value is assigned to that specific structure before the loss.

Approved March 23, 1997

Filed March 24, 1997

CHAPTER 260

SENATE BILL NO. 2042

(Legislative Council)
(Insurance and Health Care Committee)
(Senators Mathern, Thane)
(Representatives Glassheim, Wald, Price, Svedjan)

QUALIFIED SERVICE PROVIDER QUALIFICATIONS

AN ACT to create and enact a new section to chapter 26.1-45 of the North Dakota Century Code, relating to qualifications of qualified service providers; to amend and reenact section 57-38-29.2 of the North Dakota Century Code, relating to an income tax credit for premiums paid for long-term care insurance coverage; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-45 of the North Dakota Century Code is created and enacted as follows:

Qualified service providers. Any insurance company providing long-term care coverage for home and community-based services shall pay a provider meeting qualified service provider standards a daily payment allowance as defined in the policy or certificate. "Qualified service provider" means a county agency or independent contractor that agrees to meet standards for personal attendant care service as established by the department of human services.

SECTION 2. AMENDMENT. Section 57-38-29.2 of the North Dakota Century Code is amended and reenacted as follows:

57-38-29.2. Credit for premiums for long-term care insurance coverage. A credit against an individual's tax liability under this chapter is hereby provided to each taxpayer in the amount of twenty-five percent of any premiums paid by the taxpayer for long-term care insurance coverage for the taxpayer or the taxpayer's spouse, parent, ~~or~~ stepparent, or child. The credit under this section for each ~~policy purchased under this chapter~~ insured individual may not exceed one hundred dollars in any taxable year.

SECTION 3. EFFECTIVE DATE. Section 2 of this Act is effective for taxable years beginning after December 31, 1996.

Approved April 8, 1997
Filed April 8, 1997

CHAPTER 261

SENATE BILL NO. 2396

(Senators Goetz, Grindberg, Wogsland)
(Representatives Dorso, Keiser, Poolman)

LOW-RISK INCENTIVE FUND ESTABLISHMENT

AN ACT to provide for establishment and operation of the North Dakota low-risk incentive fund; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Fund" means the North Dakota low-risk incentive fund.
2. "Governing board" means the board of directors of the corporation or board of governors of the limited liability company established under section 2 of this Act.
3. "Insurer" means any foreign or domestic corporation, association, benefit society, exchange, partnership, limited liability company, or individual engaged as principal in the business of insurance in this state.
4. "Primary sector business" means an individual, corporation, limited liability company, partnership, or association that through the employment of knowledge or labor adds value to a product, process, or service which results in the creation of new wealth. Qualification as a primary sector business under this subsection must be determined by the department of economic development and finance.

SECTION 2. Establishment - Organization. Any insurer or group of insurers may establish a corporation or limited liability company to own and operate the North Dakota low-risk incentive fund. Except as provided in this Act, all authority regarding the articles of incorporation or articles of organization is the province of the governing board, which must include a representative of the Bank of North Dakota and the director of the department of economic development and finance. The Bank of North Dakota shall administer the fund; however, the governing board is responsible for adopting fund policies and procedures. The governing board may not distribute more than seventy-five percent of the net profit of the fund in any of the first five years of operation.

SECTION 3. North Dakota low-risk incentive fund use. The fund may be used only for making loans to low-risk businesses for primary sector business projects in this state and no loan may be approved or made by the fund without a ten percent participation in the aggregate amount of the loan by the Bank of North Dakota. The participation of the Bank of North Dakota in a loan may not exceed ten percent of the aggregate amount of the loan. A loan from the fund may not be made to an insurer. The governing board shall establish the rate of interest and terms of repayment for a loan from the fund. Fifty percent of the amount loaned from the fund during the first year of a biennium must be reserved solely for businesses in rural areas. The remainder loaned from the fund may be used in urban or rural areas. For purposes of this section, "rural areas" means the area of

the state not including territory within the corporate limits of a city with a population of twenty thousand or more.

SECTION 4. Loan administration. An application for a loan from the fund must contain the information prescribed by the governing board. Except as provided in this section, information contained in applications for loans from the fund is confidential. The Bank of North Dakota shall review each loan application, report to the governing board whether the applicant represents a primary sector business project, and make a recommendation to the governing board to either approve or disapprove the loan application. The Bank of North Dakota shall administer all loans issued by the fund and shall receive from the fund a service fee of twenty-five basis points on all loans in place. The commissioner of insurance may examine the fund and activities of insurers in connection with the fund to assure compliance with title 26.1. The fund shall pay for the costs of an examination and no credit may be allowed any insurer for payment of examination costs as otherwise provided under section 26.1-03-17.

SECTION 5. Audited financial statement - Report of fund operations. The governing board shall contract annually with a certified public accountant for performance of an audit and preparation of audited financial statements of the fund prepared in accordance with generally accepted accounting principles and a report containing an analysis of the impact of the fund on the state's economy, business and employment activity generated by loans from the fund, and the effects of that activity on state and local tax revenues. The governing board shall provide the financial statements and report to the governor, the commissioner of insurance, and the legislative council and make copies available to the public. The cost of the audit and preparation of financial statements and report must be paid from the fund.

SECTION 6. Tax credit - Penalty. If the requirements of this Act are met, an insurer is entitled to a credit against taxes due under section 26.1-03-17 as determined under this section.

1. An insurer making or participating in a loan under this Act is entitled to a premium tax credit calculated for each calendar year the loan is in place. The amount of the credit is the difference between:
 - a. The participating insurer's share of the interest earned on the loan during the calendar year; and
 - b. The participating insurer's share of an amount of interest that would have been earned during the same period by applying an interest rate, calculated by adding three hundred basis points to a comparable treasury security rate at the date of the issuance of the loan.
2. The maximum credit allowed an insurer for any calendar year is the amount of interest that would have been earned during the period by applying an interest rate of three hundred basis points. A credit may not be allowed if the interest earned exceeds the interest that would have been earned by applying the calculation in subdivision b of subsection 1.
3. The credit may not exceed the total amount of the insurer's tax liability under subsection 1 of section 26.1-03-17 and no unused credit may be carried forward.

4. Credits under this section for all insurers may not exceed seven hundred fifty thousand dollars in a calendar year.

SECTION 7. Assets of insurers. The amount of a loan made by an insurer or the amount of an insurer's participation in a loan made under this Act may not be considered or reported on the insurer's annual statement as an admitted asset except to the extent provided under section 2 of Senate Bill No. 2132, as approved by the fifty-fifth legislative assembly.

SECTION 8. Assets of insurers. The aggregate amount of all loans made by an insurer under this Act or the aggregate amount of an insurer's participation in loans made under this Act may not at any time exceed five percent of the company's admitted assets or the amount equal to the company's capital and surplus in excess of the minimum capital and surplus required by law, whichever is less.

SECTION 9. EFFECTIVE DATE. Section 7 of this Act is effective July 1, 1997, if Senate Bill No. 2132 is approved by the fifty-fifth legislative assembly and becomes law, and is otherwise ineffective. Section 8 of this Act is effective July 1, 1997, if Senate Bill No. 2132 is not approved by the fifty-fifth legislative assembly or does not become law, and is otherwise ineffective.

Approved April 17, 1997
Filed April 17, 1997

JUDICIAL BRANCH OF GOVERNMENT

CHAPTER 262

HOUSE BILL NO. 1453

(Representatives Devlin, Kroeplin, Nelson, Weisz)
(Senator Andrist)

SMALL CLAIMS VENUE

AN ACT to amend and reenact section 27-08.1-01 of the North Dakota Century Code, relating to the location of small claims actions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ **SECTION 1. AMENDMENT.** Section 27-08.1-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-08.1-01. Small claims court - Jurisdictional limits - Venue.

1. All judges of the district courts may exercise the jurisdiction conferred by this chapter, and while sitting in the exercise of that jurisdiction must be known and referred to as the "small claims court". The jurisdiction of this court is confined to cases for recovery of money, or the cancellation of any agreement involving material fraud, deception, misrepresentation, or false promise, where the value of the agreement or the amount claimed by the plaintiff or the defendant does not exceed five thousand dollars.
2. The proceedings in this court must be commenced:
 - a. If the defendant is a corporation, limited liability company, or a partnership, in any county in which the defendant has a place of business or in any county in which the subject matter of the claim occurred.
 - b. If the claim is for collection of a check written without sufficient funds or without an account, in the county where the check was passed, or in the county of the defendant's residence or place of business.
 - c. If the defendant is an individual and the claim is for collection of an open account on which credit has been extended:
 - (1) In the county of the defendant's residence or place of business; or

¹ Section 27-08.1-01 was also amended by section 1 of Senate Bill No. 2068, chapter 263.

- (2) If the amount of the claim is less than ~~five hundred~~ one thousand dollars and is not from a telephone or mail order transaction, in the county where the transaction occurred or in the county of the defendant's residence or place of business.
 - d. If the defendant is an individual and the claim is not made under subdivision b or c, in the county of the defendant's residence.
 - e. If the defendant is an individual and the claim arose as the result of the defendant's lease of real property, in the county where the defendant resides or in the county where the real property is located.
 - f. If the plaintiff is a political subdivision and the claim is for a public utility debt, in the county in which the political subdivision is located.
3. Except for an action under subdivision c, e, or f of subsection 2, the defendant may elect to remove the action to a small claims court in the defendant's county of residence. No claim may be filed by an assignee of that claim. No garnishment or attachment may issue from this court.

Approved April 10, 1997

Filed April 10, 1997

CHAPTER 263

SENATE BILL NO. 2068

(Judiciary Committee)

(At the request of the Supreme Court)

SMALL CLAIMS JUDGMENTS AND REMOVAL

AN ACT to amend and reenact subsection 3 of section 27-08.1-01, sections 27-08.1-02, 27-08.1-04, and 27-08.1-05 of the North Dakota Century Code, relating to small claims judgments and the commencement and removal of small claims actions; and to repeal section 27-08.1-06 of the North Dakota Century Code, relating to docketing and execution of small claims judgments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

² **SECTION 1. AMENDMENT.** Subsection 3 of section 27-08.1-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Except for an action under subdivision e of subsection 2, the defendant may elect to remove the action to a small claims court in the defendant's county of residence. ~~No~~ A claim may not be filed by an assignee of that claim. ~~No~~ A garnishment or attachment may not issue from this court until after judgment is entered.

SECTION 2. AMENDMENT. Section 27-08.1-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-08.1-02. Commencement of action - Claim affidavit. Actions in the small claims court are commenced whenever any person executes and files with the court a claim affidavit, and causes to be served by a person of legal age, not a party to or interested in the action, the affidavit on the defendant or mails it to the defendant by certified mail along with a form upon which the defendant must indicate whether a hearing is requested and whether the defendant ~~intends~~ elects to remove the action to district court. If, within twenty days of service of the affidavit and form, the court has not received a request for a hearing or an election to remove to district court, or if the defendant indicates that a hearing is not requested, a hearing will not be scheduled and judgment may be entered against the defendant by default. If the defendant requests a hearing in small claims court, the hearing must be not less than ten days and not more than thirty days after receipt of the request. Except for an action under subdivision e of subsection 2 of section 27-08.1-01, the mailing, or personal service, may be made anywhere within the state. Forms used in small claims court actions must be approved by the state court administrator and obtained from, or at the direction of, the clerk of district court.

SECTION 3. AMENDMENT. Section 27-08.1-04 of the North Dakota Century Code is amended and reenacted as follows:

² Section 27-08.1-01 was also amended by section 1 of House Bill No. 1453, chapter 262.

27-08.1-04. Election to proceed in small claims court irrevocable. Election by the plaintiff to use the procedures provided for in this chapter is irrevocable. In the event the plaintiff elects to discontinue the proceedings, the court shall enter its order accordingly, and unless otherwise provided in the order ~~such the~~ dismissal must be deemed to be with prejudice. By election to proceed in small claims court, the plaintiff waives ~~his the~~ right to appeal to any other court from the decision of the small claims court. The defendant waives ~~his the~~ right to appeal from the decision of the small claims court upon receiving ~~his the~~ order for appearance as required herein, unless ~~he the~~ defendant elects to remove the action from the small claims court to a district court which would have jurisdiction over said matter in the absence of the small claims court by filing with the small claims court and serving. If the defendant elects to remove the action to district court, the defendant must serve upon the plaintiff a notice of ~~such the~~ removal; and ~~filing file~~ with the clerk of the court to which ~~said the~~ action is removed a copy of the claim affidavit and the defendant's answer ~~thereto~~ along with the filing fee, except for an answer fee, required for civil actions ~~in said court, not later than forty-eight hours before the hearing set for the appearance of the defendant.~~

SECTION 4. AMENDMENT. Section 27-08.1-05 of the North Dakota Century Code is amended and reenacted as follows:

27-08.1-05. Judgment. The court ~~will~~ shall enter a written judgment indicating its decision on all cases filed with the court on the basis of the evidence presented. A judgment must be entered even if either party fails to appear at the hearing. The court may award the costs of the action to the prevailing party. For purposes of enforcement and execution, a judgment of the small claims court has the same force, effects, and attributes of a judgment of the district court.

SECTION 5. REPEAL. Section 27-08.1-06 of the 1995 Supplement to the North Dakota Century Code is repealed.

Approved April 9, 1997
Filed April 10, 1997

CHAPTER 264

HOUSE BILL NO. 1064

(Legislative Council)

(Judiciary Committee)

(Representatives Delmore, Nottestad, Christenson)

(Senators Watne, W. Stenehjem, Traynor)

JURY SELECTION

AN ACT to create and enact a new section to chapter 27-09.1 of the North Dakota Century Code, relating to the selection of jurors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 27-09.1 of the North Dakota Century Code is created and enacted as follows:

Selection of jurors from judicial district - Grounds and method for selection.

The court, upon its own motion, may direct that prospective jurors be selected from one or more counties in the judicial district in which the court is located if the county of venue has a population of not more than ten thousand persons and the court determines that the number of prospective jurors within the county of venue is inadequate to obtain a fair and impartial jury. Following notification by the court, the clerk of court of any county in the judicial district shall submit a specified number of names, with mailing addresses, of the prospective, qualified jurors to the clerk of court of the county of venue.

Approved March 23, 1997

Filed March 24, 1997

CHAPTER 265**SENATE BILL NO. 2103**

(Judiciary Committee)
(At the request of the Supreme Court)

STATE BAR BOARD MEMBERSHIP

AN ACT to amend and reenact section 27-11-06 of the North Dakota Century Code, relating to the membership of the state bar board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-11-06 of the North Dakota Century Code is amended and reenacted as follows:

27-11-06. State bar board established - Appointment and qualifications of board members. The state bar board must consist of at least three but no more than five members appointed by the supreme court of this state. At least three of the members of such the board must be resident licensed members of the bar and. Each board member must be appointed from a list of members of nominees submitted by the bar association of the state of North Dakota to be submitted from time to time by said association. The list so submitted, for each appointment to be made, must consist of three members of the association in good standing. The supreme court may return the list to the bar association for additional nominees. If the bar association nominates a member for reappointment, a list of nominees is not required unless requested by the supreme court.

Approved March 11, 1997

Filed March 13, 1997

CHAPTER 266

HOUSE BILL NO. 1306

(Representatives R. Kelsch, Carlisle, Mahoney)
(Senators Nalewaja, W. Stenehjem, Tallackson)

JUVENILE COURT TRANSFERS

AN ACT to amend and reenact subdivision b of subsection 1 of section 27-20-34 of the North Dakota Century Code, relating to transfers from juvenile to adult court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³ **SECTION 1. AMENDMENT.** Subdivision b of subsection 1 of section 27-20-34 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- b. The child was fourteen years of age or more at the time of the alleged conduct and the court determines that there is probable cause to believe the child committed the alleged delinquent act and the delinquent act involves the offense of murder or attempted murder; gross sexual imposition or the attempted gross sexual imposition of a victim by force or by threat of imminent death, serious bodily injury, or kidnapping; or the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance in violation of subdivision a or b of subsection 1 of section 19-03.1-23, except for the manufacture, delivery, or possession with intent to manufacture or deliver marijuana in an amount less than one pound [.45 kilograms]; or the gratuitous delivery of a controlled substance not a narcotic drug or methamphetamine which is a singular and isolated event involving an amount of controlled substance sufficient solely for a single personal use; or

Approved April 9, 1997
Filed April 10, 1997

³ Section 27-20-34 was also amended by section 1 of House Bill No. 1045, chapter 267.

CHAPTER 267

HOUSE BILL NO. 1045

(Legislative Council)

(Criminal Justice Committee)

(Representatives Bernstein, R. Kelsch, Kliniske, Brown, Mahoney)

(Senator Nalewaja)

DISTRICT COURT JURISDICTION

AN ACT to create and enact a new subsection to section 27-20-34 of the North Dakota Century Code, relating to district court jurisdiction over certain adults who committed an offense as a child.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁴ **SECTION 1.** A new subsection to section 27-20-34 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

A person at least twenty years of age who committed an offense while a child and was not adjudicated for the offense in juvenile court may be prosecuted in district court as an adult, unless the state intentionally delayed the prosecution to avoid juvenile court jurisdiction. The district court has original and exclusive jurisdiction for the prosecution under this subsection.

Approved March 23, 1997

Filed March 24, 1997

⁴ Section 27-20-34 was also amended by section 1 of House Bill No. 1306, chapter 266.

CHAPTER 268

SENATE BILL NO. 2148

(Senators Nalewaja, LaFountain, Schobinger)
(Representative Sandvig)

FOSTER CARE COURT ORDER DURATION

AN ACT to amend and reenact subsections 3 and 4 of section 27-20-36 of the North Dakota Century Code, relating to time limitations on court orders for children in foster care.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 3 and 4 of section 27-20-36 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. An order of disposition pursuant to which a child is placed in foster care ~~continues~~ may not continue in force for ~~not~~ more than eighteen months. Any other order of disposition ~~continues~~ may not continue in force for ~~not~~ more than two years.
4. Except as provided in subsection 1, the court may ~~seener~~ terminate an order of disposition before the expiration of the order or extend its duration for further periods. An order of extension may be made if:
 - a. A hearing is held ~~prior to~~ before the expiration of the order upon motion of a party or on the court's own motion;
 - b. Reasonable notice of the hearing and opportunity to be heard are given to the parties affected;
 - c. The court finds ~~that~~ the extension is necessary to accomplish the purposes of the order extended; and
 - d. The extension does not exceed ~~eighteen~~ twelve months from the expiration of an order limited by subsection 3 or two years from the expiration of any other limited order. However, the court may order that the child permanently remain in foster care with a specified caregiver and that the duration of the order be left to the determination of the court if the court determines that:
 - (1) All reasonable efforts have been made to reunite the child with the child's family;
 - (2) The deprivation is likely to continue;
 - (3) With respect to a child under the age of ten, termination of parental rights and subsequent adoption would not be in the best interests of the child; and

- (4) The placement of the child in permanent foster care is in the best interests of the child.

Approved March 19, 1997

Filed March 19, 1997

CHAPTER 269

SENATE BILL NO. 2030

(Legislative Council)

(Criminal Justice Committee)

(Senators W. Stenehjem, Nalewaja)

(Representatives R. Kelsch, Brown, Mahoney, Bernstein)

JUVENILE OFFENDER DATA COLLECTION

AN ACT to create and enact a new section to chapter 27-20 of the North Dakota Century Code, relating to data collection on certain juvenile offenders; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 27-20 of the North Dakota Century Code is created and enacted as follows:

Law enforcement data base.

1. If a court adjudicates that a child has committed a delinquent act that, if committed by an adult, is defined as a sexual assault under section 12.1-20-07 or is a violation of section 12.1-16-01, 12.1-18-01, 12.1-18-02, 12.1-20-03, or 12.1-20-04 or chapter 12.1-17, 12.1-27.2, or 12.1-29, the court shall send written notice of the disposition to the attorney general. The notice must be sent within twenty days of the disposition. The notice must contain the child's name, the child's date of birth, the child's social security number, the child's address, the name and location of the child's school, the names and addresses of the child's parents or guardians, and a copy of the disposition order. The court shall send a copy of any modification to the order to the attorney general within twenty days of the disposition or modification.
2. If a person who is listed on the data base has a change in name or address, that person shall inform the attorney general in writing, within ten days, of the person's new name or address and shall otherwise comply with address verification procedures as required by the attorney general. The person shall comply with this requirement for ten years after the date of the disposition, or until destruction of the records is ordered by the court, whichever date is earlier. A person listed on the data base who violates this section is guilty of a class A misdemeanor.
3. Notwithstanding any other provision of law, the attorney general shall release disposition information on file to law enforcement officers for law enforcement purposes and to the department of human services for licensing purposes. The court shall notify the superintendent of the school district and the principal of the school the child attends of the disposition. The school administration shall notify the child's teachers and guidance counselor of this information and shall notify others in similar positions if the child transfers to another learning institution in or outside the state. A law enforcement agency shall disclose to the public relevant and necessary disposition information released by the attorney general if the agency determines that an individual adjudicated of a

second delinquent act under subsection 1 is a public risk and disclosure of the disposition information is necessary for public protection.

4. A law enforcement agency or school district, its officials, and its employees are not subject to civil or criminal liability for disclosing or failing to disclose information as permitted by this section.

Approved April 10, 1997

Filed April 10, 1997

CHAPTER 270

SENATE BILL NO. 2123

(Judiciary Committee)

(At the request of the Supreme Court)

JUDICIAL CONDUCT COMMISSION COMPOSITION AND DUTIES

AN ACT to amend and reenact sections 27-23-01, 27-23-02, 27-23-03, 27-23-06, 27-23-08, and 27-23-09 of the North Dakota Century Code, relating to the creation, composition, duties, and operation of the judicial conduct commission; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-23-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-23-01. (Effective until January 1, 2000) Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. ~~"Chairman"~~ "Chair" means the ~~chairman~~ chair of the commission and includes any acting ~~chairman~~ chair.
2. "Commission" means the ~~commission~~ on judicial conduct commission.
3. ~~"Counsel"~~ "Disciplinary counsel" means one or more attorneys appointed by the commission to gather and present evidence and act on its behalf in proceedings before a ~~master~~ of the commission, a hearing panel, or ~~in~~ the supreme court.
4. "Hearing panel" means a four-member panel consisting of at least two citizen members of the commission, appointed by the chair to conduct a hearing and make recommendations after the filing of formal charges or a petition for transfer to incapacity inactive status.
5. "Judge" means a justice of the supreme court, a judge of the temporary court of appeals, a judge of the district court, a judicial referee, a judge of a municipal court, and, in the case provided in section 29-01-14, a small claims court referee.
5. ~~"Master" means one or more judges, active or retired, or attorneys appointed by the supreme court upon the request of the commission; or one or more members of the commission designated by the commission to hold hearings and make findings of fact on issues of fact arising in proceedings under this chapter.~~
6. "Shall" is mandatory, but not jurisdictional, and "may" is permissive.

(Effective January 1, 2000) Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "~~Chairman~~" "Chair" means the ~~chairman~~ chair of the commission and includes any acting ~~chairman~~ chair.
2. "Commission" means the ~~commission~~ on judicial conduct commission.
3. "~~Counsel~~" "Disciplinary counsel" means one or more attorneys appointed by the commission to gather and present evidence and act on its behalf in proceedings before a ~~master~~ or the commission, a hearing panel, or ~~in~~ the supreme court.
4. "Hearing panel" means a four-member panel consisting of at least two citizen members of the commission, appointed by the chair to conduct a hearing and make recommendations after the filing of formal charges or a petition for transfer to incapacity inactive status.
5. "Judge" means a justice of the supreme court, a judge of the district court, a judicial referee, a judge of a municipal court, and, in the case provided in section 29-01-14, a small claims court referee.
5. "~~Master~~" means ~~one or more judges, active or retired, or attorneys appointed by the supreme court upon the request of the commission; or one or more members of the commission designated by the commission to hold hearings and make findings of fact on issues of fact arising in proceedings under this chapter.~~
6. "Shall" is mandatory, but not jurisdictional, and "may" is permissive.

SECTION 2. AMENDMENT. Section 27-23-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-23-02. Creation and composition of commission, terms of office, appointment, and powers. The ~~commission on~~ judicial conduct is hereby created to ~~consist~~ commission consists of two judges of the district court, one lawyer ~~who is~~ licensed to practice law in this state, and four citizens who are not judges, retired judges, or lawyers. Members representing the district court must be appointed by their state association and the lawyer member must be appointed by the ~~executive committee~~ board of governors of the state bar association of North Dakota. The citizen members must be appointed by the governor. The term of each member is three years. ~~Initially, two members shall serve for three years, two members shall serve for two years, and three members shall serve for one year; as determined by lot. No~~ A member may not serve more than two full three-year terms. Membership terminates if a member ceases to hold the position that qualified ~~him~~ the member for appointment. A vacancy must be filled by the appointing power for the remainder of the term. Any appointment to fill a vacancy not made within forty-five days after the vacancy occurs or the term of office ends must be made by the supreme court. The commission shall select one of its members as ~~chairman~~ chair.

The commission has the power to investigate complaints against any judge in the state and the chair may appoint a hearing panel to conduct hearings concerning the discipline, removal, ~~or~~ retirement, or transfer to incapacity inactive status of any judge.

SECTION 3. AMENDMENT. Section 27-23-03 of the North Dakota Century Code is amended and reenacted as follows:

27-23-03. Other powers.

1. A judge is disqualified from acting as a judge, without loss of salary, while there is pending:
 - a. An indictment or an information charging ~~him~~ the judge in the United States with a crime punishable as a felony under North Dakota or federal law; or
 - b. A recommendation submitted by the commission to the supreme court for ~~his~~ the judge's removal or retirement.
2. On recommendation of the commission or on its own motion, the supreme court may suspend a judge from office without salary when, in the United States, ~~he~~ the judge pleads guilty or no contest or is found guilty of a crime punishable as a felony under North Dakota or federal law or of any other crime that involves moral turpitude under that law. If ~~his~~ the judge's conviction is reversed, suspension terminates; and ~~he~~ the judge must be paid ~~his~~ the salary for the period of suspension. If ~~he~~ the judge is suspended and ~~his~~ the conviction becomes final, the supreme court shall remove ~~him~~ the judge from office.
3. On recommendation of the commission or a hearing panel of the commission, the supreme court may (a) retire a judge for disability that seriously interferes with the performance of ~~his~~ the judge's duties and is, or is likely to become, permanent; ~~and~~ (b) transfer, with the possibility of reinstatement, a judge to incapacity inactive status; or (c) publicly censure or remove a judge for action that constitutes willful misconduct in office, willful failure to perform ~~his~~ duties as prescribed by law or by administrative rule ~~or regulation~~ of the supreme court, willful violation of ~~provisions~~ of the code of judicial conduct as adopted by the supreme court, or habitual intemperance. ~~No proceedings hereunder~~ The commission may impose private, nonpublic discipline for minor misconduct that does not warrant public discipline or may direct disposition of allegations of misconduct in other manners considered appropriate. A proceeding under this section or implementing rules of the supreme court may not be instituted for alleged acts occurring more than six years ~~prior to~~ before receiving a complaint.
4. A judge retired by the supreme court must be considered to have retired voluntarily. A judge removed by the supreme court is ineligible for judicial office, and pending further order of the court, ~~he~~ the judge is suspended from practicing law in this state.
5. The supreme court shall make rules implementing this chapter and providing for confidentiality of proceedings.
6. The procedure provided for ~~herein~~ in this section may be used in addition to the impeachment proceedings provided for in the Constitution of North Dakota as applicable to district and supreme court judges.
7. The commission may employ or share the employment of such officers, assistants, and other employees as it deems necessary for the performance of the duties and exercise of the powers conferred upon the commission ~~and upon the masters~~; may arrange for and compensate medical and other experts and reporters; may arrange for attendance of witnesses, including witnesses not subject to subpoena; and may pay

from funds available to it all expenses reasonably necessary for effectuating the purposes of this chapter, whether or not specifically enumerated herein. The attorney general shall, if requested by the commission, act as its counsel generally or in any particular investigation or proceeding. The commission may employ special counsel from time to time whenever it deems necessary.

8. Each member of the commission ~~and each master~~ must be allowed expenses for travel, board, and lodging incurred in the performance of ~~his~~ official duties, as provided in sections 44-08-04 and 54-06-09.
9. ~~No~~ An act of the commission or hearing panel is not valid unless concurred in by at least a majority of its members.

SECTION 4. AMENDMENT. Section 27-23-06 of the North Dakota Century Code is amended and reenacted as follows:

27-23-06. General powers of commission ~~or masters~~, hearing panel, and disciplinary counsel. In the conduct of investigations and formal proceedings, the commission, hearing panel, or ~~the masters~~ disciplinary counsel may:

1. Administer oaths.
2. Order and otherwise provide for the inspection of books and records.
3. Issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony relevant to any ~~such~~ investigation or formal proceeding.

The power to administer oaths, to issue subpoenas, or to make orders for or concerning the inspection of books and records may be exercised by a member of the commission or a ~~master~~ hearing panel, unless the commission ~~shall~~ determine determines.

SECTION 5. AMENDMENT. Section 27-23-08 of the North Dakota Century Code is amended and reenacted as follows:

27-23-08. Petition for order compelling person to attend or testify or produce writings or things - Service of order to appear before court - Order to appear before commission or ~~masters~~ hearing panel - Contempt. If any a person refuses to attend, testify, or produce any writings or things required by subpoena, the commission or the ~~masters~~ hearing panel may petition the district court for the county in which the hearing is pending for an order compelling a person to attend and testify or produce the writings or things required by the subpoena before the commission or ~~the masters~~ hearing panel. The court shall order a person to appear before it at a specified time and place ~~and then and there~~ to show cause why ~~he~~ the person has not attended or testified or produced the writings or things as required. A copy of the order must be served upon ~~him~~ the person. If it appears to the court that the subpoena was regularly issued, the court shall order a person to appear before the commission or ~~the masters~~ hearing panel at the time and place fixed in the order and testify or produce the required writings or things. Upon failure to obey the order, a person must be punished as provided in section 12.1-10-02.

SECTION 6. AMENDMENT. Section 27-23-09 of the North Dakota Century Code is amended and reenacted as follows:

27-23-09. Deposition. In any investigation or formal proceeding under this chapter, the commission, hearing panel, or ~~the masters~~ disciplinary counsel, ~~pursuant to~~ under the North Dakota Rules of Civil Procedure, may order the deposition of a person residing within or without the state to be taken.

Approved March 11, 1997

Filed March 13, 1997

CHAPTER 271**SENATE BILL NO. 2062**
(Senator Lips)**JUDICIAL VACANCY FILLING**

AN ACT to amend and reenact section 27-25-04 of the North Dakota Century Code, relating to appointments to fill vacancies in judicial offices.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-25-04 of the North Dakota Century Code is amended and reenacted as follows:

27-25-04. Governor to appoint or call special election. Within thirty days after receipt of the list of nominees, the governor shall do any of the following:

1. Fill the vacancy by appointment from the list of nominees submitted by the committee. ~~The appointment continues only until the next general election, when the office must be filled by election for the remainder of the term.~~
2. Return the list of nominees and direct the committee to reconvene.
3. Call a special election to fill the vacancy for the remainder of the term.

If the governor determines to call a special election to fill the vacancy, the governor shall issue a writ of election to the auditors of the counties in the district in which the district vacancy occurs commanding them to notify the boards of election in the counties to hold a special election at a time designated by the governor. If the governor determines to call a special election within sixty days of the time of the next general election, the special election must be held at the same time as the general election.

Approved March 21, 1997
Filed March 21, 1997

JUDICIAL PROCEDURE, CIVIL

CHAPTER 272

SENATE BILL NO. 2217

(Senator W. Stenehjem)

MEDICAL MALPRACTICE EXPERT WITNESSES

AN ACT to amend and reenact section 28-01-46 of the North Dakota Century Code, relating to expert witnesses in medical malpractice actions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-01-46 of the North Dakota Century Code is amended and reenacted as follows:

28-01-46. Expert opinion required to maintain an action based upon alleged medical negligence except in obvious cases. Any action for injury or death against a physician, nurse, or hospital licensed by this state based upon professional negligence ~~is dismissable~~ must be dismissed without prejudice on motion unless the claimant has obtained an admissible expert opinion to support the allegation of professional negligence within three months of the commencement of the action or at such later date as set by the court for good cause shown by the plaintiff. The expert's affidavit must identify the name and business address of the expert, indicate the expert's field of expertise, and contain a brief summary of the basis for the expert's opinion. This section does not apply to alleged lack of informed consent, unintentional failure to remove a foreign substance from within the body of a patient, or performance of a medical procedure upon the wrong patient, organ, limb, or other part of the patient's body, or other obvious occurrence.

Approved March 25, 1997

Filed March 26, 1997

CHAPTER 273**HOUSE BILL NO. 1351**

(Representative Svedjan)

(Senator Traynor)

HEALTH CARE PROVIDER PRIVILEGE WAIVER

AN ACT to provide for a waiver of privilege for health care providers and informal discussions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Waiver of privilege for health care providers and informal discussion. A party who commences an action for malpractice, error, mistake, or failure to cure, whether based on contract or tort, against a health care provider, as defined in section 32-42-01, or a health care facility, on the person's own behalf or in a representative capacity, waives in that action any privilege existing under rule 503 of the North Dakota Rules of Evidence, as to any medical records, opinions, or other information in the possession of any other health care provider who has examined or cared for the party or other person whose health or medical condition has been placed in controversy in the action. The waiver must permit all defendants to the action, and their attorneys or authorized representatives, to examine the medical records, opinions, or other information and informally participate in a discussion with the health care provider, if the provider consents, regarding the medical records, opinions, or other information that appear reasonably calculated to lead to the discovery of admissible evidence as to any element of the action or the defense of the action. Any statements made by a health care provider during an informal discussion are not admissible, directly or by reference in direct or cross-examination of any witness, in any administrative, civil, or criminal proceeding. However, this section does not render inadmissible any statements obtained from the health care provider in discovery or any legal proceedings independent of the informal discussion which are otherwise admissible in the administrative, civil, or criminal proceeding.

The plaintiff's attorney or authorized representative must have the opportunity to be present at any informal discussion. This requirement is satisfied if the defendant's attorney serves a written notice on the plaintiff's attorney at least fifteen days prior to the informal discussion stating the time, date, and location of the informal discussion. If the plaintiff's attorney, after consultation with the defendant's attorney, is unable to attend the discussion at the time or on the date specified in the notice or at some other agreed upon date and time, the court in which the action is pending shall, upon motion of any party before the date specified in the notice, hold a scheduling conference to set a date and time for the informal discussion that will best serve the convenience of the parties and the health care provider and the interests of justice. Appropriate medical authorizations permitting access to the written medical record, informal discussion, and testimony at a deposition or trial, must be provided by the party commencing the action upon request from any other party to the action.

Approved April 4, 1997

Filed April 4, 1997

CHAPTER 274

HOUSE BILL NO. 1063

(Legislative Council)

(Judiciary Committee)

(Representatives Nottestad, Delmore, Christenson)

(Senators C. Nelson, W. Stenehjem)

TRIAL LOCATION CHANGES

AN ACT to create and enact two new sections to chapter 28-04 and a new section to chapter 29-01 of the North Dakota Century Code, relating to civil and criminal proceedings; to amend and reenact sections 28-04-02, 28-04-03, 28-04-04, 28-04-05, 29-03-07, 29-03-08, and 54-18-12 of the North Dakota Century Code, relating to the location of civil and criminal proceedings; and to repeal section 28-04-06 of the North Dakota Century Code, relating to the proper location of civil trials.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 28-04 of the North Dakota Century Code is created and enacted as follows:

Change of place of pretrial proceedings - Expenses. Notwithstanding any other provision of law, in any pretrial hearing or proceeding, except a hearing for a motion to suppress evidence, the court may change the place of the hearing or proceeding from the location in which the matter was originally to be heard.

SECTION 2. A new section to chapter 28-04 of the North Dakota Century Code is created and enacted as follows:

Change of place of trial - Jury - Expenses. Notwithstanding any other provision of law, in any civil trial the court may change the place of the trial from the location in which the matter was originally to be heard. If any party files an objection to the change of trial no later than ten days after the date of notice of assignment or reassignment of a judge for trial of the case, the trial must be held where originally venued. In the case of a jury trial, the jury panel must be composed of residents of the original county of venue or residents of the judicial district as provided by section 1 of House Bill No. 1064, as approved by the fifty-fifth legislative assembly.

SECTION 3. AMENDMENT. Section 28-04-02 of the North Dakota Century Code is amended and reenacted as follows:

28-04-02. Personal actions having venue where subject matter is located. An action for any of the following causes must be tried in the county in which the subject of the action, or some part of the subject, is situated, subject to the power of the court to change the place of trial in the cases provided by statute sections 1 and 2 of this Act:

1. For the recovery of personal property distrained for any cause; and

2. For recovery on an insurance policy for loss or damage to the property insured, and such property at the time of its loss or damage is deemed the subject matter of the action.

SECTION 4. AMENDMENT. Section 28-04-03 of the North Dakota Century Code is amended and reenacted as follows:

28-04-03. Actions having venue where the cause arose. An action for any one of the following causes must be tried in the county where the cause or some part thereof arose, subject to the power of the court to change the place of trial as provided in sections 1 and 2 of this Act:

1. For the recovery of a penalty or forfeiture imposed by statute, except that when it is imposed for an offense committed on a lake or river or other stream of water situated in two or more counties, the action may be brought in any county bordering on such lake, river, or stream, and opposite the place where the offense was committed; and
2. Against a public officer, or person specially appointed to execute ~~his~~ the officer's duties, for an act done by ~~him~~ that individual by virtue of ~~his~~ office, or against a person who by ~~his~~ that person's command or ~~his~~ aid shall do anything touching the duties of such officer.

SECTION 5. AMENDMENT. Section 28-04-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-04-04. Venue of actions against domestic corporations and limited liability companies. An action against a domestic corporation or limited liability company must be ~~tried~~ brought in the county designated in plaintiff's complaint if such corporation or limited liability company transacts business in that county.

SECTION 6. AMENDMENT. Section 28-04-05 of the North Dakota Century Code is amended and reenacted as follows:

28-04-05. Actions having venue where defendant resides. In all other cases, except as provided in section 28-04-03.1, and subject to the power of the court to change the place of trial as provided by ~~statute~~ sections 1 and 2 of this Act, the action must be ~~tried~~ brought in the county in which the defendant or one of the defendants resides at the time of the commencement of the action. If ~~such~~ that county is attached to another county for judicial purposes, the action must be ~~tried~~ brought in the latter county. If none of the defendants reside in the state, the action must be ~~tried~~ brought in the county which the plaintiff shall designate in the summons.

SECTION 7. A new section to chapter 29-01 of the North Dakota Century Code is created and enacted as follows:

Change of place of criminal proceedings - Jury. Notwithstanding any other provision of law, in any initial appearance, arraignment, hearing, proceeding, or trial the court may change the place of the initial appearance, arraignment, hearing, proceeding, or trial from the location in which the matter was originally to be heard. If any party files an objection to the change of trial no later than ten days after the date of notice of assignment or reassignment of a judge for trial of the case, the trial must be held where originally venued. In the case of a jury trial, the jury panel must be composed of residents of the original county of venue or residents of the judicial

district as provided by section 1 of House Bill No. 1064, as approved by the fifty-fifth legislative assembly.

SECTION 8. AMENDMENT. Section 29-03-07 of the North Dakota Century Code is amended and reenacted as follows:

29-03-07. Venue of offense in or against aircraft. ~~Any~~ Subject to section 7 of this Act, any person who commits an offense in or against any aircraft while it is in flight over this state may be tried in any county in this state.

SECTION 9. AMENDMENT. Section 29-03-08 of the North Dakota Century Code is amended and reenacted as follows:

29-03-08. Venue of offenses committed on railroad train or other vehicle. ~~Where~~ Subject to section 7 of this Act, where an offense is committed on a railroad train or other vehicle while in the course of a trip, the trial may be in any county through which ~~such~~ the train or other public vehicle passed during ~~such~~ the trip.

SECTION 10. AMENDMENT. Section 54-18-12 of the North Dakota Century Code is amended and reenacted as follows:

54-18-12. Civil actions on association transactions - Names of parties - Service - Venue - Statement filing provisions inapplicable. Civil actions may be brought against the state of North Dakota on account of claims for relief claimed to have arisen out of transactions connected with the operation of the association upon ~~condition that the provisions of~~ compliance with this section ~~are complied with~~. In such actions the state must be designated as the state of North Dakota, doing business as North Dakota mill and elevator association, and the service of process therein must be made upon the manager of the association. Such actions must be brought in the county where the association has its principal place of business, except as provided in sections 28-04-01 through 28-04-04, ~~28-04-06,~~ and 28-04-07. Section 54-14-04 does not apply to claims against the state affected by this section.

SECTION 11. REPEAL. Section 28-04-06 of the North Dakota Century Code is repealed.

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 275**HOUSE BILL NO. 1323**

(Representatives R. Kelsch, Carlisle, Kretschmar, Mahoney)

REAL PROPERTY JUDGMENT REQUIREMENTS

AN ACT to amend and reenact section 28-20-08 of the North Dakota Century Code, relating to real property judgments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-20-08 of the North Dakota Century Code is amended and reenacted as follows:

28-20-08. Judgment may order delivery of possession - Enforcement. Every judgment ~~which~~ that contains a direction for the sale of ~~any~~ specific real property also may direct the delivery of the possession of ~~such~~ the property to the purchaser, and the officer receiving the execution or order of sale may enforce ~~such~~ the judgment by putting the purchaser in possession of the premises as if special execution had been directed to ~~him~~ the purchaser for that purpose. The judgment creditor must show that the debtor has an interest in the real property that is the subject of the judgment.

Approved March 25, 1997
Filed March 26, 1997

CHAPTER 276

HOUSE BILL NO. 1324

(Representatives R. Kelsch, Carlisle, Kretschmar, Mahoney)

WRIT OF EXECUTION CONTENTS

AN ACT to amend and reenact section 28-21-06 of the North Dakota Century Code, relating to the contents of writs of execution.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-21-06 of the North Dakota Century Code is amended and reenacted as follows:

28-21-06. Issuance and contents of execution. The writ of execution must be issued in the name of the state of North Dakota, attested in the name of the judge of the court that entered the judgment, sealed with the seal of the court, subscribed by the clerk of that court, and directed and delivered to a sheriff as provided in section 28-21-05. It must refer intelligibly to the judgment, stating the date and time the judgment was filed with the clerk, the courts and counties to which the judgment has been transcribed, ~~and~~ the names of the parties, the last known address of the judgment debtor, the approximate age of the judgment debtor, and the date of birth of the judgment debtor if known. If the execution is against the property of a judgment debtor, the execution must also state the amount of money the judgment ordered the debtor to pay to the judgment creditor, the date and time the judgment was docketed by the clerk, the rate of interest to be used in calculating interest due on the judgment pursuant to section 28-20-34, the amount of the costs accruing on the judgment as of the date of issuance of the execution, and if the execution is being issued to a sheriff of a county other than that of the county of the issuing writ, the date and time the judgment was docketed in the county of the sheriff to whom the execution is being issued. If the execution is for the delivery of the possession of real or personal property, the execution must also particularly describe the property to be delivered, specify the value of the property, identify the party entitled to possession of the property, and, if the same judgment orders the party against whom the judgment was rendered to pay any costs, damages, or rents or profits to the party entitled to possession of the property, list the amounts of the costs, damages, or rents or profits payable as of the date of issuance of the execution. Upon receipt of an execution the sheriff shall:

1. If the execution is against the property of the judgment debtor, satisfy the judgment with interest and accruing costs, which include sheriff and county costs, out of the personal property of the debtor, and, if sufficient personal property cannot be found, out of the real property belonging to the debtor on the day when the judgment was docketed in the county or at any time thereafter. If real or personal property of the debtor is in the hands of a personal representative, heir, devisee, legatee, tenant of real property, or trustee, the sheriff may satisfy the judgment out of that property; or

2. If the execution is for the delivery of the possession of real or personal property, deliver the possession of the property to the party entitled thereto, and satisfy any costs, damages, or rents or profits recovered by the same judgment out of the personal property of the party against whom it was rendered and, if sufficient personal property cannot be found, out of the real property belonging to the party on the day when the judgment was docketed in the county or at any time thereafter. If delivery of the property cannot be had, the sheriff may satisfy the judgment in the amount of the value of the property out of the real and personal property of the party as if an execution against the property of the party had been issued.

Approved April 3, 1997

Filed April 3, 1997

CHAPTER 277

HOUSE BILL NO. 1158

(Judiciary Committee)

(At the request of the Office of Administrative Hearings)

ADJUDICATIVE PROCEEDING PROCEDURES

AN ACT to create and enact two new sections to chapter 28-32 of the North Dakota Century Code, relating to specific agency statutes and rules and emergency adjudicative proceedings; and to amend and reenact sections 23-01-23, 28-32-01, 28-32-05, 28-32-05.1, 28-32-06, 28-32-07, 28-32-08, 28-32-08.2, subsection 1 of section 28-32-08.4, sections 28-32-09, 28-32-12, 28-32-12.1, 28-32-12.2, 28-32-13, subsection 1 of section 28-32-17, sections 43-18.2-05, and 43-18.2-06 of the North Dakota Century Code, relating to procedures for adjudicative proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-01-23 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-01-23. Permit hearings - Exemption from chapters 28-32 and 54-57. A permit hearing conducted for purposes of receiving public comment under chapters 23-20.1, 23-20.3, 23-25, 23-29, 61-28, and 61-28.1 is not a ~~contested case~~ an adjudicative proceeding under chapter 28-32 and is not subject to the requirements of chapter 54-57.

¹ **SECTION 2. AMENDMENT.** Section 28-32-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-32-01. Definitions. In this chapter, unless the context or subject matter otherwise provides:

1. "Adjudicative proceeding" means an administrative matter resulting in an agency issuing an order after an opportunity for hearing is provided or required. An adjudicative proceeding includes administrative matters involving a hearing on a complaint against a specific-named respondent; a hearing on an application seeking a right, privilege, or an authorization from an agency, such as a ratemaking or licensing hearing; or a hearing on an appeal to an agency. An adjudicative proceeding includes reconsideration, rehearing, or reopening. Once an adjudicative proceeding has begun, the adjudicative proceeding includes any informal disposition of the administrative matter under section 28-32-05.1 or another specific statute or rule, unless the matter has been specifically

¹ Section 28-32-01 was also amended by section 1 of Senate Bill No. 2398, chapter 449; section 7 of Senate Bill No. 2033, chapter 182; section 8 of Senate Bill No. 2336, chapter 157; section 1 of House Bill No. 1042, chapter 278; section 6 of Senate Bill No. 2045, chapter 115; section 1 of House Bill No. 1183, chapter 451; and section 24 of Senate Bill No. 2046, chapter 51.

converted to another type or proceeding under section 28-32-05.1. An adjudicative proceeding does not include a decision or order to file or not to file a complaint, or to initiate an investigation, an adjudicative proceeding, or any other proceeding before the agency, or another agency, or a court. An adjudicative proceeding does not include a decision or order to issue, reconsider, or reopen an order that precedes an opportunity for hearing or that under another section of this code is not subject to review in an adjudicative proceeding. An adjudicative proceeding does not include rulemaking under this chapter.

2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, or employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency shall be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
 - a. The office of management and budget except with respect to rules relating to the state building code as authorized or required under section 54-21.3-03, rules relating to the Model Energy Code as required under section 54-21.2-03, rules relating to the central personnel system as authorized under section 54-44.3-07, rules relating to state purchasing practices as required under section 54-44.4-04, rules relating to records management as authorized or required under chapter 54-46, and rules relating to the central microfilm unit as authorized under chapter 54-46.1.
 - b. The adjutant general with respect to the division of emergency management.
 - c. The council on the arts.
 - d. The state auditor.
 - e. The department of economic development and finance.
 - f. The dairy promotion commission.
 - g. The education factfinding commission.
 - h. The educational telecommunications council.
 - i. The board of equalization.
 - j. The board of higher education.
 - k. The Indian affairs commission.
 - l. The industrial commission with respect to the activities of the Bank of North Dakota, the North Dakota housing finance agency, the North Dakota municipal bond bank, and the North Dakota mill and elevator association.

- m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under chapter 54-23.4.
 - n. ~~The board of pardons.~~
 - o. ~~The parks and recreation department.~~
 - p. ~~o.~~ The parole board.
 - q. ~~p.~~ The superintendent of public instruction, except with respect to rules prescribed under section 15-21-07 and rules implementing chapter 15-22.
 - r. ~~q.~~ The state fair association.
 - s. ~~r.~~ The state department of health with respect to the state toxicologist.
 - t. ~~s.~~ The board of university and school lands except with respect to activities under chapter 47-30.1.
 - u. ~~t.~~ The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.
 - v. ~~u.~~ The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.
 - w. ~~v.~~ The secretary of state with respect to rules adopted for the presidential preference contest under section 16.1-11-02.2.
- ~~2.~~ 3. "Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by law.
 - ~~3.~~ 4. "Complainant" means any person who files a complaint before an administrative agency pursuant to section 28-32-05; and any administrative agency which, when authorized by law, files such a complaint before such agency or any other agency.
 - ~~4.~~ "Contested case" means a proceeding, including but not restricted to ratemaking and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.
 5. "Hearing officer" means any agency head or one or more members of the agency head when presiding in an administrative proceeding, or, unless prohibited by law, one or more other persons designated by the agency head to preside in an administrative proceeding, an administrative law judge from the office of administrative hearings, or any other person duly assigned, appointed, or designated to preside in an administrative proceeding pursuant to statute or rule.
 6. "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law.

7. "Order" means any agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons, but does not mean an executive order issued by the governor.
8. "Party" means each person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party. An administrative agency may be a party.
9. "Person" includes an individual, association, partnership, corporation, limited liability company, state governmental agency or governmental subdivision, or an agency of such governmental subdivision.
10. "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the administrative action more probable or less probable than it would be without the evidence.
11. "Rule" means the whole or a part of an agency statement of general applicability that implements or prescribes law or policy, or the organization, procedure, or practice requirements of the agency. The term includes the adoption of new rules and the amendment, repeal, or suspension of an existing rule. The term does not include:
 - a. A rule concerning only the internal management of an agency which does not directly or substantially affect the substantive or procedural rights or duties of any segment of the public.
 - b. A rule that sets forth criteria or guidelines to be used by the staff of an agency in the performance of audits, investigations, inspections, and settling commercial disputes or negotiating commercial arrangements, or in the defense, prosecution, or settlement of cases, if the disclosure of the statement would:
 - (1) Enable law violators to avoid detection;
 - (2) Facilitate disregard of requirements imposed by law; or
 - (3) Give a clearly improper advantage to persons who are in an adverse position to the state.
 - c. A rule establishing specific prices to be charged for particular goods or services sold by an agency.
 - d. A rule concerning only the physical servicing, maintenance, or care of agency owned or operated facilities or property.
 - e. A rule relating only to the use of a particular facility or property owned, operated, or maintained by the state or any of its subdivisions, if the substance of the rule is adequately indicated by means of signs or signals to persons who use the facility or property.
 - f. A rule concerning only inmates of a correctional or detention facility, students enrolled in an educational institution, or patients

admitted to a hospital, if adopted by that facility, institution, or hospital.

- g. A form whose contents or substantive requirements are prescribed by rule or statute or are instructions for the execution or use of the form.
- h. An agency budget.
- i. An opinion of the attorney general.
- j. A rule adopted by an agency selection committee under section 54-44.7-03.
- k. Any material, including a guideline, interpretive statement, statement of general policy, manual, brochure, or pamphlet, that is explanatory and not intended to have the force and effect of law.

SECTION 3. AMENDMENT. Section 28-32-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-32-05. Rules of practice or procedure - Contested case proceedings - Emergency proceedings - Other proceedings Adjudicative proceedings - Procedures.
The Administrative agencies shall comply with the following rules of procedure shall be observed by all administrative agencies procedures in all adjudicative proceedings:

1. a. For ~~contested cases~~ adjudicative proceedings involving a hearing on a complaint and against a specific-named respondent, a complainant shall prepare and file a clear and concise complaint with the agency having subject matter jurisdiction of ~~a~~ the proceeding. The complaint shall contain a concise statement of the claims or charges upon which the complainant relies including reference to the statute or rule alleged to be violated, and the relief sought.
- b. ~~When~~ After a complaint is filed, the appropriate administrative agency shall serve a copy of the complaint upon the respondent ~~personally or by certified mail, as the agency may direct, in the manner allowed for the service of process under the North Dakota Rules of Civil Procedure~~ at least forty-five days before the time specified for a hearing on the complaint.
- c. ~~Unless a statute or rule otherwise requires or specifically provides for suspension or revocation without a hearing, the~~ The administrative agency shall designate the time and place for the hearing and shall serve a copy of the notice ~~for~~ of hearing upon the respondent ~~personally or by certified mail, as the agency may direct in the manner allowed for service under the North Dakota Rules of Civil Procedure,~~ at least twenty days before the time specified for the hearing on the complaint. Service of the notice of hearing may be waived in writing by the respondent, or the parties may agree on a definite time and place for hearing with the consent of the agency having jurisdiction.

- d. A complaint may be served less than forty-five days before the time specified for a hearing on the complaint and a notice ~~for~~ of hearing on a complaint may be served less than twenty days before the time specified for hearing if otherwise authorized by statute. However, no administrative hearing regarding the renewal, suspension, or revocation of a license may be held fewer than ten days after the licensee has been served, personally or by certified mail, with a copy of a notice for hearing along with an affidavit, complaint, specification of issues, or other document alleging violations upon which the license hearing is based.
 - e. A complaint may inform the respondent that an answer to the complaint must be served upon the complainant and the agency with which the complaint is filed within twenty days after service of the complaint, or the agency may deem the complaint to be admitted. If the respondent fails to answer ~~as requested~~ as required within twenty days after service of the complaint, the agency may enter an order in default as the facts and law may warrant. Answers must be served in the manner allowed for service under the North Dakota Rules of Civil Procedure.
 - f. Service by certified mail is complete as of the date of certification upon compliance with the provisions of the North Dakota Rules of Civil Procedure. Proof of service may be made as provided in the North Dakota Rules of Civil Procedure.
 - g. A respondent may be given less than twenty days to answer the complaint, pursuant to another statute, but no respondent may be required to answer a complaint in less than five days and an answer must be served on the complainant and the agency with which the complaint is filed at least two days before the hearing on the complaint.
 - h. ~~In an emergency, in a contested case, the agency, in its discretion, may serve a complaint fewer than forty-five days before the hearing and notice the hearing on the complaint by giving less than twenty days' notice. But, every party to an emergency proceeding shall be given a reasonable time within which to serve an answer and to prepare for the hearing, which may be extended by the agency upon good cause being shown. Amended and supplemental pleadings may be served and filed with the agency in the manner allowed for amended and supplemental pleadings under the North Dakota Rules of Civil Procedure.~~
2. At any ~~contested case~~ hearing in an adjudicative proceeding, the ~~respondent, applicant, appellant, or other party~~ parties shall be afforded opportunity to present evidence and to examine and cross-examine witnesses as is permitted under sections 28-32-06 and 28-32-11.1.
 3. a. If the ~~administrative action~~ adjudicative proceeding does not involve a hearing on a complaint and against a specific-named respondent, the provisions of subsection 1 of this section do not apply. Unless otherwise provided by law, the provisions of subdivisions b through d of this subsection apply.

- b. An administrative agency may adopt rules establishing practices or procedures for proceedings which do not involve a complaint and a specific-named respondent, including agency hearings on applications seeking some right, privilege, or authorization from an agency, or appeals to the agency of some other agency action. All proceedings which do not involve a complaint and a specific-named respondent must comply with another statute or rules of practice or procedure adopted pursuant to statute by an administrative agency. Notice pursuant to a rule must provide for at least twenty days' notice before the hearing except in cases of emergency or when a shorter notice period is necessary to comply with the requirements of federal statutes, rules, or standards. The administrative agency shall designate the time and place for the hearing and shall serve a copy of the notice of hearing upon all the parties in the manner allowed for service under the North Dakota Rules of Civil Procedure at least twenty days before the hearing. Service of the notice of hearing may be waived in writing by the parties, or the parties may agree on a definite time and place for the hearing with the consent of the agency having jurisdiction.
- c. A hearing under this subsection may not be held unless the parties have been properly served with a copy of the notice of hearing as well as a written specification of issues for hearing or other document indicating the issues to be considered and determined at the hearing. In lieu of, or in addition to, a specification of issues or other document, an explanation about the nature of the hearing and the issues to be considered and determined at the hearing may be contained in the notice.
- d. Service is complete upon compliance with the provisions of the North Dakota Rules of Civil Procedure. Proof of service may be made as provided in the North Dakota Rules of Civil Procedure.

SECTION 4. A new section to chapter 28-32 of the North Dakota Century Code is created and enacted as follows:

Adjudicative proceedings - Exceptions - Rules of procedure. Notwithstanding the requirements for standardization of procedures in adjudicative proceedings under this chapter, an administrative agency may adopt specific agency rules of procedure not inconsistent with this chapter. An administrative agency may also adopt specific agency rules of procedure when necessary to comply with requirements found elsewhere in this code or when necessary to comply with the requirements of federal statutes, rules, or standards.

SECTION 5. AMENDMENT. Section 28-32-05.1 of the North Dakota Century Code is amended and reenacted as follows:

28-32-05.1. Informal disposition. Unless otherwise prohibited by specific statute or rule, informal disposition may be made of any ~~contested case, noncontested case, or other administrative~~ adjudicative proceeding, or any part or issue thereof, by stipulation, settlement, waiver of hearing, consent order, default, alternative dispute resolution, or other informal disposition, subject to agency approval. Any administrative agency may adopt rules of practice or procedure for informal disposition if such rules do not substantially prejudice the rights of any party. Such rules may establish procedures for converting an administrative hearing matter from one type of proceeding to another type of proceeding.

SECTION 6. A new section to chapter 28-32 of the North Dakota Century Code is created and enacted as follows:

Emergency adjudicative proceedings. An administrative agency may use an emergency adjudicative proceeding, in its discretion, in an emergency situation involving imminent peril to the public health, safety, or welfare.

1. In an emergency, the administrative agency may take action pursuant to a specific statute as is necessary to prevent or avoid imminent peril to the public health, safety, or welfare.
2. In an emergency, in the absence of a specific statute, an administrative agency may serve a complaint fewer than forty-five days before the hearing and give notice of a hearing on the complaint by giving less than twenty days' notice as is necessary to prevent or avoid imminent peril to the public health, safety, or welfare. But, every party to the emergency adjudicative proceeding must be given a reasonable time within which to serve an answer and to prepare for the hearing, which may be extended by the agency upon good cause being shown.
3. In an emergency, in the absence of a specific statute, in an adjudicative proceeding that does not involve a complaint against a specific-named respondent, an administrative agency may give notice of a hearing by giving less than twenty days' notice as is necessary to prevent or avoid imminent peril to the public health, safety, or welfare. But, every party to the emergency adjudicative proceeding shall be given a reasonable time to prepare for the hearing, which may be extended by the agency upon good cause being shown.
4. As a result of the emergency adjudicative proceeding, in the absence of a specific statute requiring other administrative action, the administrative agency shall issue an order. The order must include a brief statement of the reasons justifying the determination of imminent peril to the public health, safety, or welfare and requiring an emergency adjudicative proceeding to prevent or avoid the imminent peril.
5. After issuing an order pursuant to this section, the administrative agency shall proceed as soon as possible to complete any other proceedings related to the emergency adjudicative proceeding that do not involve imminent peril to the public health, safety, or welfare.

SECTION 7. AMENDMENT. Section 28-32-06 of the North Dakota Century Code is amended and reenacted as follows:

28-32-06. Evidence to be considered by agency - Official notice.

1. The admissibility of evidence in any adjudicative proceeding before an administrative agency shall be determined in accordance with the North Dakota Rules of Evidence. An administrative agency, or any person conducting proceedings for it, may waive application of the North Dakota Rules of Evidence if a waiver is necessary to ascertain the substantial rights of a party to the proceeding, but only relevant evidence shall be admitted. The waiver must be specifically stated, orally or in writing, either prior to or at a hearing or other proceeding.

2. All objections offered to evidence shall be noted in the record of the proceeding. No information or evidence except that which has been offered, admitted, and made a part of the official record of the proceeding shall be considered by the administrative agency, except as otherwise provided in this chapter.
- ~~2.~~ 3. Upon proper objection, evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds, or on the basis of evidentiary privilege recognized in the courts of this state, may be excluded. In the absence of proper objection, the agency, or any person conducting ~~an investigation of a~~ proceeding for it, may exclude objectionable evidence.
4. The North Dakota Rules of Evidence in regard to privileges apply at all stages of an administrative proceeding under this chapter.
- ~~3.~~ 5. All testimony must be made under oath or affirmation. Relevant statements presented by nonparties may be received as evidence if all parties are given an opportunity to cross-examine the nonparty witness or to otherwise challenge or rebut the statements. Nonparties may not examine or cross-examine witnesses except pursuant to a grant of intervention.
- ~~4.~~ 6. Evidence may be received in written form if doing so will expedite the proceeding without substantial prejudice to the interests of any party.
- ~~5.~~ 7. Official notice may be taken of any facts that could be judicially noticed in the courts of this state. Additionally, official notice may be taken of any facts as authorized in agency rules.

SECTION 8. AMENDMENT. Section 28-32-07 of the North Dakota Century Code is amended and reenacted as follows:

28-32-07. Adjudicative proceedings - Consideration of information not presented at a formal hearing. ~~An~~ In any adjudicative proceeding, an administrative agency may avail itself of competent and relevant information or evidence in its possession or furnished by members of its staff, or secured from any person in the course of an independent investigation conducted by the agency, in addition to the evidence presented at ~~any formal~~ the hearing. It may do so after first transmitting a copy of the information or evidence or an abstract thereof to each party of record in the proceeding. The agency must afford each party, upon written request, an opportunity to examine the information or evidence and to present its own information or evidence and to cross-examine the person furnishing the information or evidence. Any further testimony that is necessary shall be taken at a hearing to be called and held ~~upon,~~ giving at least ten days' notice ~~given by personal service or certified mail.~~ Notice must be served upon the parties in the manner allowed for service under the North Dakota Rules of Civil Procedure. This section also applies to information officially noticed after the hearing when the issuance of any initial or final order is based in whole or in part on the facts or material noticed.

SECTION 9. AMENDMENT. Section 28-32-08 of the North Dakota Century Code is amended and reenacted as follows:

28-32-08. Investigations - Hearings - Specifications of any issues to be furnished by agency - Costs of investigation.

1. An administrative agency may hold investigatory hearings to which the provisions of subsections 1 and 2 of section 28-32-05 and any rules adopted establishing practices or procedures for a contested or noncontested case proceeding do not apply. An administrative agency may adopt rules of practice or procedure for investigatory hearings. No investigatory hearing may be held except pursuant to statute or rules of practice or procedure adopted by an agency. No investigatory hearing may be held unless the agency gives at least five days' notice to all parties involved in the hearing.
2. Whenever an administrative agency, pursuant to authority conferred upon it by law, institutes an investigation upon its own motion or upon the claim or request of any person, without the filing of a specified complaint, or holds any contested case hearing upon its own motion or the claim or request of any person, without the filing of a specified complaint, no final order may be issued by the agency until all parties in interest have been furnished with a written specification of the issues which are to be considered and determined, nor until an opportunity has been afforded to all parties to present evidence and to be heard upon the precise issues so specified pursuant to notice being issued as required by section 28-32-05, unless the final order is issued pursuant to informal disposition in accordance with section 28-32-05.1. The director of the workers compensation bureau may make initial determinations without giving the notice provided by this section, but the director is subject to the requirements of section 28-32-13.
3. An agency may assess the costs of an investigation to a person found to be in violation of a statute or rule as a result of a hearing an adjudicative proceeding or informal disposition. The total costs assessed and any civil penalty that may be imposed as a result of violation may not exceed the statutorily authorized civil penalty for the violation. For the purposes of this subsection section, costs mean reasonable out-of-pocket agency costs, not including any attorney's fees, actually incurred in conducting the investigation for which they may be assessed. Any such costs paid must be paid into the general fund and are hereby appropriated as a refund to the agency for the purposes of defraying the costs of undertaking the investigation.

SECTION 10. AMENDMENT. Section 28-32-08.2 of the North Dakota Century Code is amended and reenacted as follows:

28-32-08.2. Intervention. An administrative agency may grant intervention in an administrative adjudicative proceeding to promote the interest interests of justice if intervention will not impair the orderly and prompt conduct of the proceedings proceeding and if the petitioning intervenor demonstrates that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of statute or rule. The agency may impose conditions and limitations upon intervention. The agency shall give reasonable notice of the intervention to all parties. An administrative agency may adopt rules relating to intervention in an administrative adjudicative proceeding.

SECTION 11. AMENDMENT. Subsection 1 of section 28-32-08.4 of the North Dakota Century Code is amended and reenacted as follows:

1. If a party fails to attend or participate in a prehearing conference, hearing, or other stage of a ~~contested case administrative~~ an adjudicative proceeding, the agency may enter and serve upon all parties written notice of default and a default order, including a statement of the grounds for default.

SECTION 12. AMENDMENT. Section 28-32-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-32-09. Adjudicative proceedings - Subpoenas - Discovery - Protective orders.

1. ~~Any~~ In an adjudicative proceeding, discovery may be obtained in accordance with the North Dakota Rules of Civil Procedure.
2. In an adjudicative proceeding, a party must first show good cause, by written petition, and get the written approval of the hearing officer, before obtaining discovery from an administrative agency. Before obtaining discovery from an administrative agency by means of a request for the production of documents that are public records, the requesting party must have first made a diligent and good faith effort to review the documents under existing general law procedures for the inspection of public records and access must have been denied.
3. In any adjudicative proceeding, upon the request or motion of any party to the proceeding or upon the hearing officer's own motion on behalf of the agency, a hearing officer may issue subpoenas, discovery orders, and protective orders in accordance with the North Dakota Rules of Civil Procedure. A motion to quash or modify, or any other motion relating to subpoenas, discovery, or protective orders must be made to the hearing officer. The hearing officer's rulings on these motions may be appealed under section 28-32-15 after issuance of the final order by the agency.
2. ~~Any hearing officer may require, upon the request of any party to the proceedings conducted by the agency, or upon the agency's or the hearing officer's own motion on behalf of the agency, the attendance and testimony of witnesses and the production of documents and other objects described in a subpoena at a hearing or other part of the proceedings. The cost of issuing and serving a subpoena in any adjudicative proceeding must be paid by the person or agency requesting it. A party, except an administrative agency, must first show general relevance and reasonable scope of the evidence sought, by written petition, and obtain the written approval of the agency or the person presiding, before a subpoena to compel a witness to produce documentary evidence will be issued for the party.~~
3. ~~The deposition of a witness or any party in proceedings before an agency may be taken in accordance with the North Dakota Rules of Civil Procedure.~~
4. ~~Interrogatories and requests for production of documents may be sent to any witness or party in proceedings before an agency in accordance with the North Dakota Rules of Civil Procedure.~~

5. ~~A party, except an administrative agency, must first show good cause, by written petition, and obtain the written approval of the agency or the presiding hearing officer, before undertaking discovery proceedings, including depositions and interrogatories.~~
6. 4. Any witness who is subpoenaed under the provisions of this section and who appears at a hearing or other part of an adjudicative proceeding, or whose deposition is taken, shall receive the same fees and mileage as a witness in a civil case in the district court. Witness fees and mileage shall be paid by the party or agency at whose instance the witness appears. Any hearing officer may order the payment of witness fees or mileage by the appropriate party or agency.
7. 5. Subpoenas, discovery orders, protective orders, and other orders issued under this section may be enforced by applying to any judge of the district court for an order requiring the attendance of a witness, the production of all documents and objects described in the subpoena, or otherwise enforcing an order. Failure of a witness or other person to comply with the order of the district court is contempt of court which is punishable by the district court, upon application. The judge may award attorney's fees to the ~~parties seeking enforcement of a subpoena~~ prevailing party in an application under this subsection.

SECTION 13. AMENDMENT. Section 28-32-12 of the North Dakota Century Code is amended and reenacted as follows:

28-32-12. Agency to make record. An administrative agency shall make a record of all testimony, written statements, documents, exhibits, and other evidence presented at any ~~contested case proceeding, noncontested case proceeding,~~ adjudicative proceeding or other administrative proceeding heard by it. Oral testimony may be taken by a court reporter, by a stenographer, or by use of an electronic recording device. All evidence presented at any proceeding before the administrative agency shall be filed with the agency. A copy of the record of any proceeding before an administrative agency, or a part thereof, must be furnished to any party to the proceeding and to any other person allowed to participate in the proceeding, upon written request submitted to the agency and upon payment of a uniform charge to be set by the agency. Any fee paid to an administrative agency for the record, or a part thereof, shall be paid into the general fund and is hereby appropriated as a refund to the agency for the purposes of defraying the costs of preparing the record. An agency may contract with any person or another agency to prepare a record, or a part thereof, of any proceeding before the agency.

SECTION 14. AMENDMENT. Section 28-32-12.1 of the North Dakota Century Code is amended and reenacted as follows:

28-32-12.1. Ex parte communications.

1. Except as provided in subsection 2 or unless required for the disposition of ex parte matters specifically authorized by another statute, an agency head or hearing officer in a ~~contested case~~ an adjudicative proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding, while the proceeding is pending, with any party, with any person who has a direct or indirect interest in the outcome of the proceeding, with any other person allowed to participate in the proceeding, or with any person who presided at a previous stage of the

proceeding, without notice and opportunity for all parties to participate in the communication.

2. When more than one person is the hearing officer in a ~~contested case~~ an adjudicative proceeding, those persons may communicate with each other regarding a matter pending before the panel. An agency head or hearing officer may communicate with or receive aid from staff assistants if the assistants do not furnish, augment, diminish, or modify the evidence in the record.
3. Unless required for the disposition of ex parte matters specifically authorized by statute, no party to a ~~contested case~~ an adjudicative proceeding, no person who has a direct or indirect interest in the outcome of the proceeding, no person allowed to participate in the proceeding, and no person who presided at a previous stage in the proceeding may communicate directly or indirectly in connection with any issue in that proceeding, while the proceeding is pending, with any agency head or hearing officer in the proceeding without notice and opportunity for all parties to participate in the communication.
4. If, before being assigned, designated, or appointed to preside in a ~~contested case~~ an adjudicative proceeding, a person receives an ex parte communication of a type that could not properly be received while presiding, the person, promptly after being assigned, designated, or appointed, shall disclose the communication in the manner prescribed in subsection 5.
5. An agency head or hearing officer in a ~~contested case~~ an adjudicative proceeding who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, or a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the person received an ex parte oral communication, and shall advise all parties, interested persons, and other persons allowed to participate that these matters have been placed on the record. Any person desiring to rebut the ex parte communication must be allowed to do so, upon requesting the opportunity for rebuttal. A request for rebuttal must be made within ten days after notice of the communication.
6. If necessary to eliminate the effect of an ex parte communication received in violation of this section, an agency head or hearing officer in a ~~contested case~~ an adjudicative proceeding who receives the communication may be disqualified, upon good cause being shown in writing to the hearing officer or to the agency. The portions of the record pertaining to the communication may be sealed by protective order issued by the agency.
7. The agency shall, and any party may, report any willful violation of this section to the appropriate authorities for any disciplinary proceedings provided by law. In addition, an administrative agency may, by rule, provide for appropriate sanctions, including default, for any violations of this section.
8. Nothing in this section prohibits a member of the general public, not acting on behalf or at the request of any party, from communicating

with an agency in cases of general interest. The agency shall disclose such written communications in ~~contested cases~~ adjudicative proceedings.

SECTION 15. AMENDMENT. Section 28-32-12.2 of the North Dakota Century Code is amended and reenacted as follows:

28-32-12.2. Separation of functions.

1. No person who has served as investigator, prosecutor, or advocate in the investigatory or prehearing stage of a ~~contested case~~ an adjudicative proceeding may serve as hearing officer.
2. No person who is subject to the direct authority of one who has served as an investigator, prosecutor, or advocate in the investigatory or prehearing stage of a ~~contested case~~ an adjudicative proceeding may serve as hearing officer.
3. Any other person may serve as hearing officer in a ~~contested case hearing~~ an adjudicative proceeding, unless a party demonstrates grounds for disqualification.
4. Any person may serve as hearing officer at successive stages of the same ~~contested case~~ adjudicative proceeding, unless a party demonstrates grounds for disqualification.

SECTION 16. AMENDMENT. Section 28-32-13 of the North Dakota Century Code is amended and reenacted as follows:

28-32-13. Adjudicative proceedings - Findings of fact, conclusions of law, and order of agency - Notice.

1. ~~Within thirty days after the evidence has been received, briefs filed, and arguments closed in a proceeding before~~ In an adjudicative proceeding an administrative agency, or as soon thereafter as possible, the agency shall make and state concisely and explicitly its findings of fact and its separate conclusions of law, and the order of the agency based upon its findings and conclusions.
2. If the agency head, or another person authorized by the agency head or by law to issue a final order, is presiding, the order issued is the final order. The agency shall serve a copy of the final order and the findings of fact and conclusions of law on which it is based upon all the parties to the proceeding within thirty days after the evidence has been received, briefs filed, and arguments closed, or as soon thereafter as possible, in the manner allowed for service under the North Dakota Rules of Civil Procedure.
3. If the agency head, or another person authorized by the agency head or by law to issue a final order, is not presiding, then the person presiding shall issue recommended findings of fact and conclusions of law and a recommended order which becomes within thirty days after the evidence has been received, briefs filed, and arguments closed, or as soon thereafter as possible. The recommended findings of fact and conclusions of law and the recommended order become final unless specifically amended or rejected by the agency head. The agency head

may adopt ~~a~~ the recommended findings of fact and conclusions of law and the recommended order as the final order. The agency may allow petitions for review of a recommended order and may allow oral argument pending issuance of a final order. An administrative agency may adopt rules regarding the review of recommended orders and other procedures for issuance of a final order by the agency.

4. ~~The~~ If a recommended order is issued, the agency must give notice of an ~~serve a copy of any final order issued in any proceeding heard by it by~~ delivering a copy of the order, and the findings of fact and conclusions ~~upon~~ of law on which it is based; ~~to~~ upon all the parties to the proceeding either personally or by certified mail. If notice is given by certified mail, the notice shall be deemed given as of the date of certification. Pursuant to agency rule, in circumstances requiring it, an agency may give notice of an order by mailing the order, and the findings and conclusions upon which it is based, to all the parties by regular mail, provided it files an affidavit of service by mail indicating ~~upon whom the order was served within sixty days after the evidence has been received, briefs filed, and arguments closed, or as soon thereafter as possible, in the manner allowed for service under the North Dakota Rules of Civil Procedure.~~

SECTION 17. AMENDMENT. Subsection 1 of section 28-32-17 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. An administrative agency shall maintain an official record of each ~~contested case proceeding, noncontested case proceeding,~~ adjudicative proceeding or other administrative proceeding heard by it.

SECTION 18. AMENDMENT. Section 43-18.2-05 of the North Dakota Century Code is amended and reenacted as follows:

43-18.2-05. Out-of-state applicants. An applicant for a sewer and water contractor's license or a sewer and water installer's license from out of state may take the examination upon showing by affidavits that the applicant has experience in the state in which the applicant is licensed. This experience must be the same as is required of applicants from this state. The board shall provide applicants with application forms and affidavit forms necessary to comply with this section. The secretary-treasurer of the board shall investigate the validity of the affidavits. A rejected application must be treated as ~~a contested case~~ an adjudicative proceeding.

SECTION 19. AMENDMENT. Section 43-18.2-06 of the North Dakota Century Code is amended and reenacted as follows:

43-18.2-06. Experience for testing. An applicant for a sewer and water installer's license shall show evidence of two years' experience as a building sewer and water installer apprentice in this state. Applicants for a sewer and water installation contractor's license must have one year's experience as an installer in this state. All applicants shall show that their work complies with the state plumbing code. Proof of experience must be shown by affidavits which the board may

investigate. The board shall provide applicants with application forms. If the application is rejected, the matter must be treated as a ~~contested case~~ an adjudicative proceeding.

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 278

HOUSE BILL NO. 1042

(Legislative Council)

(Criminal Justice Committee)

(Representatives Kretschmar, Brown, Mahoney, R. Kelsch, Bernstein)

(Senator Nalewaja)

ADMINISTRATIVE PROCEEDING PARTY DEFINITION

AN ACT to amend and reenact subsection 8 of section 28-32-01 of the North Dakota Century Code, relating to the definition of a party to an administrative proceeding.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

² **SECTION 1. AMENDMENT.** Subsection 8 of section 28-32-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. "Party" means each person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party. An administrative agency may be a party. In a hearing for the suspension, revocation, or disqualification of an operator's license under title 39, the term may include each city and each county in which the alleged conduct occurred, but the city or county may not appeal the decision of the hearing officer.

Approved March 23, 1997

Filed March 24, 1997

² Section 28-32-01 was also amended by section 1 of Senate Bill No. 2398, chapter 449; section 7 of Senate Bill No. 2033, chapter 182; section 8 of Senate Bill No. 2336, chapter 157; section 6 of Senate Bill No. 2045, chapter 115; section 1 of House Bill No. 1183, chapter 451; section 2 of House Bill No. 1158, chapter 277; and section 24 of Senate Bill No. 2046, chapter 51.

CHAPTER 279

HOUSE BILL NO. 1030 (Legislative Council) (Administrative Rules Committee)

ADMINISTRATIVE RULES COMMITTEE VOIDING RULES

AN ACT to amend and reenact section 28-32-03.3 of the North Dakota Century Code, relating to consideration of administrative rules by the administrative rules committee; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³ **SECTION 1. AMENDMENT.** Section 28-32-03.3 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-32-03.3. Committee on administrative rules - Finding that rules are void - Objection to rules - Effects of objection.

1. The legislative council's committee on administrative rules may find that all or any portion of a rule is void if that ~~finding is made~~ rule is initially considered by the committee within ninety days after the date of the administrative code supplement in which the rule change appears or, for rule changes appearing in the administrative code supplement from November first immediately preceding a regular session of the legislative assembly through the following May first, if that ~~finding is made~~ rule is initially considered by the committee at the first meeting of the administrative rules committee following the regular session of the legislative assembly. The committee on administrative rules may find a rule or portion of a rule void if the committee makes the specific finding that, with regard to that rule or portion of a rule, there is:
 - a. An absence of statutory authority.
 - b. An emergency relating to public health, safety, or welfare.
 - c. A failure to comply with express legislative intent or to substantially meet the procedural requirements of this chapter for adoption of the rule.
 - d. A conflict with state law.
 - e. Arbitrariness and capriciousness.

³ Section 28-32-03.3 was also amended by section 2 of House Bill No. 1030, chapter 279, and section 1 of House Bill No. 1191, chapter 554, which was vetoed.

- f. A failure to make a written record of its consideration of written and oral submissions respecting the rule under subsection 3 of section 28-32-02.
2. The committee on administrative rules may find a rule void at the meeting at which the rule is initially considered by the committee or may hold consideration of that rule for one subsequent meeting. Within three business days after the committee on administrative rules finds that a rule is void, the office of the legislative council shall provide written notice of that finding and the committee's specific finding under subdivisions a through f of subsection 1 to the adopting agency and to the chairman of the legislative council. Within fourteen days after receipt of the notice, the adopting agency may file a petition with the chairman of the legislative council for review by the legislative council of the decision of the committee on administrative rules. If the adopting agency does not file a petition for review, the rule becomes void on the fifteenth day after the notice from the office of the legislative council to the adopting agency. If within sixty days after receipt of the petition from the adopting agency the legislative council has not disapproved by motion the finding of the committee on administrative rules, the rule is void.
3. If the legislative council's committee on administrative rules objects to all or any portion of a rule because the committee deems it to be unreasonable, arbitrary, capricious, or beyond the authority delegated to the adopting agency, the committee may file that objection in certified form in the office of the legislative council. The filed objection must contain a concise statement of the committee's reasons for its action.
 - a. The office of the legislative council shall attach to each objection a certification of the time and date of its filing and, as soon as possible, shall transmit a copy of the objection and the certification to the agency adopting the rule in question. The office of the legislative council shall also maintain a permanent register of all committee objections.
 - b. The office of the legislative council shall publish an objection filed pursuant to this section in the next issue of the code supplement. In case of a filed committee objection to a rule subject to the exceptions of the definition of rule in section 28-32-01, the agency shall indicate the existence of that objection adjacent to the rule in any compilation containing that rule.
 - c. Within fourteen days after the filing of a committee objection to a rule, the adopting agency shall respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection.
 - d. After the filing of a committee objection, the burden of persuasion is upon the agency in any action for judicial review or for enforcement of the rule to establish that the whole or portion thereof objected to is within the procedural and substantive authority delegated to the agency. If the agency fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment must be rendered against the agency for court costs. These court costs must include a

reasonable attorney's fee and must be payable from the appropriation of the agency which adopted the rule in question.

4. An agency may amend or repeal a rule or create a related rule if, after consideration of rules by the committee on administrative rules, the agency and committee agree that the rule amendment, repeal, or creation is necessary to address any of the considerations under subsection 1. A rule amended, repealed, or created under this subsection is not subject to the other requirements of this chapter relating to adoption of administrative rules and may be resubmitted by the agency to the legislative council for publication as amended, repealed, or created and reconsidered by the committee on administrative rules at a subsequent meeting at which public comment on the agreed rule change must be allowed.

⁴ **SECTION 2. AMENDMENT.** Section 4 of chapter 310 of the 1995 Session Laws is amended and reenacted as follows:

SECTION 4. AMENDMENT. Section 28-32-03.3 of the North Dakota Century Code is amended and reenacted as follows:

28-32-03.3. Committee on administrative rules - Suspension of rules - Objection to rules - Effects of objection.

1. The legislative council's committee on administrative rules may find, for any reason under this subsection, that all or any portion of a rule should be reviewed by the legislative assembly, and the committee may suspend the rule or portion of a rule under this subsection if the ~~suspension is made~~ rule is initially considered by the committee within ninety days after the date of the administrative code supplement in which the rule change appears or, for rule changes appearing in the administrative code supplement from November first immediately preceding a regular session of the legislative assembly through the following May first, if that ~~suspension is made~~ rule is initially considered by the committee at the first meeting of the administrative rules committee following the regular session of the legislative assembly. A rule or a portion of a rule suspended under this subsection becomes permanently ineffective unless it is ratified by both houses of the legislative assembly during the next session of the legislative assembly, in which case it is effective as of the date of ratification by the second house of the legislative assembly. An agency seeking ratification of its rule shall introduce a bill for that purpose. The committee on administrative rules may suspend a rule or portion of a rule if the committee specifically finds that, with regard to the rule, there is:
 - a. An absence of statutory authority.
 - b. An emergency relating to public health, safety, or welfare.

⁴ Section 28-32-03.3 was also amended by section 1 of House Bill No. 1030, chapter 279, and section 1 of House Bill No. 1191, chapter 554, which was vetoed.

- c. A failure to comply with express legislative intent or to substantially meet the procedural requirements of this chapter for adoption of the rule.
 - d. A conflict with state law.
 - e. Arbitrariness and capriciousness.
 - f. A failure to make a written record of its consideration of written and oral submissions respecting the rule under subsection 3 of section 28-32-02.
 2. The committee on administrative rules may suspend a rule at the meeting at which the rule is initially considered by the committee or may hold consideration of that rule for one subsequent meeting. Within three business days after the committee on administrative rules suspends a rule, the office of the legislative council shall provide written notice of that suspension and the committee's specific finding under subdivisions a through f of subsection 1 to the adopting agency and to the chairman of the legislative council. Within fourteen days after receipt of the notice, the adopting agency may file a petition with the chairman of the legislative council for review by the legislative council of the decision of the committee on administrative rules. After receipt of the petition and before the next session of the legislative assembly, the legislative council by motion may lift the suspension and reinstate the rule's effectiveness.
 3. If the legislative council's committee on administrative rules objects to all or any portion of a rule because the committee deems it to be unreasonable, arbitrary, capricious, or beyond the authority delegated to the adopting agency, the committee may file that objection in certified form in the office of the legislative council. The filed objection must contain a concise statement of the committee's reasons for its action.
 - a. The office of the legislative council shall attach to each objection a certification of the time and date of its filing and, as soon as possible, shall transmit a copy of the objection and the certification to the agency adopting the rule in question. The office of the legislative council shall also maintain a permanent register of all committee objections.
 - b. The office of the legislative council shall publish an objection filed pursuant to this section in the next issue of the code supplement. In case of a filed committee objection to a rule subject to the exceptions of the definition of rule in section 28-32-01, the agency shall indicate the existence of that objection adjacent to the rule in any compilation containing that rule.
 - c. Within fourteen days after the filing of a committee objection to a rule, the adopting agency shall respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection.
 - d. After the filing of a committee objection, the burden of persuasion is upon the agency in any action for judicial review or for enforcement of the rule to establish that the whole or portion thereof objected to is within the procedural and substantive

authority delegated to the agency. If the agency fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment must be rendered against the agency for court costs. These court costs must include a reasonable attorney's fee and must be payable from the appropriation of the agency which adopted the rule in question.

4. An agency may amend or repeal a rule or create a related rule if, after consideration of rules by the committee on administrative rules, the agency and committee agree that the rule amendment, repeal, or creation is necessary to address any of the considerations under subsection 1. A rule amended, repealed, or created under this subsection is not subject to the other requirements of this chapter relating to adoption of administrative rules and may be resubmitted by the agency to the legislative council for publication as amended, repealed, or created and reconsidered by the committee on administrative rules at a subsequent meeting at which public comment on the agreed rule change must be allowed.

SECTION 3. EFFECTIVE DATE. Section 1 of this Act is effective for administrative rules taking effect after July 31, 1997. Section 2 of this Act is suspended from operation, but becomes effective retroactive to August 1, 1997, upon a ruling by the North Dakota supreme court that any portion of subsection 1 of section 28-32-03.3 as created by section 3 of chapter 310 of the 1995 Session Laws and amended by section 1 of this Act is unconstitutional.

Approved April 2, 1997
Filed April 3, 1997

JUDICIAL PROCEDURE, CRIMINAL

CHAPTER 280

SENATE BILL NO. 2112

(Senator Traynor)

TRIBAL EXTRADITION PROCEEDINGS

AN ACT to provide for extradition proceedings regarding those subject to tribal arrest warrants; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires:

1. "Tribal arrest warrant" means any document issued by a court of a tribe in this state which authorizes a peace officer to take custody of a person.
2. "Tribe" means any of the federally recognized Indian nations, tribes, or bands in this state.

SECTION 2. Arrest with or without warrant.

1. A peace officer may arrest a person subject to a tribal arrest warrant if presented with the warrant and may arrest a person without a tribal arrest warrant upon probable cause to believe that the person is the subject of such a warrant. An arrest is authorized under this subsection only if the arrest warrant is issued for commission of a crime punishable as a misdemeanor under the applicable tribal ordinance or resolution.
2. The arrested person must be brought without unnecessary delay before the nearest available district judge.
3. The district judge shall issue an order continuing custody upon presentation of the tribal arrest warrant or, if the arrest is made without a warrant, upon testimony or affidavit showing probable cause to believe the person is the subject of such a warrant.

SECTION 3. Court appearance.

1. The district judge shall inform the person appearing under section 2 of this Act of the name of the tribe that has subjected the person to an arrest warrant, the basis for the arrest warrant, the right to assistance of counsel, and the right to require a judicial hearing before transfer of custody to the applicable tribal authority.
2. After being informed by the district judge of the effect of a waiver, the arrested person may waive the right to require a judicial hearing and consent to return to the applicable tribal authority by executing a written

waiver in the presence of the judge. If the waiver is executed, the judge shall issue an order to transfer custody under section 4 of this Act or, with the consent of the applicable tribal authority, authorize the voluntary return of the person to that authority.

3. If a hearing is not waived under subsection 2, the district judge shall hold a hearing within three days, excluding weekends and holidays, after the appearance. The arrested person and the state's attorney of the county in which the hearing is to be held must be informed of the time and place of the hearing. The judge shall release the person upon conditions that will reasonably assure availability of the person for the hearing or direct a law enforcement officer to maintain custody of the person until the time of the hearing. Following the hearing, the judge shall issue an order to transfer custody under section 4 of this Act unless the arrested person establishes by clear and convincing evidence that the arrested person is not the person identified in the warrant.
4. If the judge does not order transfer of custody, the judge shall order the arrested person to be released.

SECTION 4. Order to transfer custody.

1. A judicial order to transfer custody issued under section 3 of this Act must direct a law enforcement officer to take or retain custody of the person until an agent of the applicable tribal authority is available to take custody. If the agent has not taken custody within three days, excluding weekends and holidays, the judge may order the release of the person upon conditions that will assure the person's availability on a specified date within seven days, excluding weekends and holidays. If the agent has not taken custody within the time specified in the order, the person must be released. Thereafter, an order to transfer custody may be entered only if a new arrest warrant is issued.
2. The judge in the order transferring custody may authorize the voluntary return of the person with the consent of the applicable tribal authority.
3. An order to transfer custody is not appealable. An order denying transfer is appealable.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 9, 1997
Filed April 10, 1997

CHAPTER 281**HOUSE BILL NO. 1275**

(Representative Mahoney)
(Senator Traynor)

**ARRESTED PERSON APPEARANCE BEFORE
MAGISTRATE**

AN ACT to amend and reenact subsection 2 of section 29-30.3-04, subsection 1 of section 29-30.3-05, and subsection 1 of section 29-30.3-13 of the North Dakota Century Code, relating to the magistrate before which an arrested person may be brought.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 29-30.3-04 of the North Dakota Century Code is amended and reenacted as follows:

2. The arrested person must be brought ~~forthwith~~ before a the nearest available magistrate ~~in the county where arrest is made~~.

SECTION 2. AMENDMENT. Subsection 1 of section 29-30.3-05 of the North Dakota Century Code is amended and reenacted as follows:

1. A magistrate ~~in~~ for the county where arrest is sought shall authorize the issuance of an arrest warrant or other process to obtain the appearance of a person, if testimony or affidavit shows probable cause to believe:
 - a. The person is in this state; and
 - b. The person is the subject of another state's arrest warrant issued for:
 - (1) The commission of a crime punishable by death or imprisonment for a term exceeding one year;
 - (2) Escape from confinement; or
 - (3) Violation of any term of bail, probation, parole, or order arising out of a criminal proceeding.

SECTION 3. AMENDMENT. Subsection 1 of section 29-30.3-13 of the North Dakota Century Code is amended and reenacted as follows:

1. A person arrested under a governor's warrant must be brought ~~forthwith~~ before a the nearest available magistrate; ~~in the county where the person is arrested~~; who shall receive the warrant and inform the person of:
 - a. The name of the state demanding extradition;
 - b. The crime charged or other basis for the demand;

- c. The right to assistance of counsel; and
- d. The right to a judicial hearing under section 29-30.3-14.

Approved March 23, 1997
Filed March 24, 1997

UNIFORM PROBATE CODE

CHAPTER 282

HOUSE BILL NO. 1091

(Judiciary Committee)

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

NONPROBATE TRANSFERS ON DEATH

AN ACT to amend and reenact sections 30.1-31-10 and 30.1-31-19 of the North Dakota Century Code, relating to alteration of rights and discharge under nonprobate transfers on death.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 30.1-31-10 of the North Dakota Century Code is amended and reenacted as follows:

30.1-31-10. (6-213) Alteration of rights.

1. Rights at death under section 30.1-31-09 are determined by the ~~type~~ terms of the account at the death of a party. The ~~type~~ terms of the account may be altered by written notice given by a party to the financial institution to change the ~~type~~ terms of the account or to stop or vary payment under the terms of the account. The notice must be signed by a party and received by the financial institution during the party's lifetime.
2. A right of survivorship arising from the express terms of the account, section 30.1-31-09, or a P.O.D. designation, may not be altered by will.

SECTION 2. AMENDMENT. Section 30.1-31-19 of the North Dakota Century Code is amended and reenacted as follows:

30.1-31-19. (6-226) Discharge.

1. Payment made pursuant to sections 30.1-31-02 through 30.1-31-20 in accordance with the ~~type~~ terms of the account discharges the financial institution from all claims for amounts so paid, whether or not the payment is consistent with the beneficial ownership of the account as between parties, beneficiaries, or their successors. Payment may be made whether or not a party, beneficiary, or agent is disabled, incapacitated, or deceased when payment is requested, received, or made.
2. Protection under this section does not extend to payments made after a financial institution has received written notice from a party, or from the personal representative, surviving spouse, or heir or devisee of a deceased party, to the effect that payments in accordance with the terms of the account, including one having an agency designation, should not

be permitted, and the financial institution has had a reasonable opportunity to act on it when the payment is made. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in a request for payment if the financial institution is to be protected under this section. Unless a financial institution has been served with process in an action or proceeding, no other notice or other information shown to have been available to the financial institution affects its right to protection under this section.

3. A financial institution that receives written notice pursuant to this section or otherwise has reason to believe that a dispute exists as to the rights of the parties may refuse, without liability, to make payments in accordance with the terms of the account.
4. Protection of a financial institution under this section does not affect the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of sums on deposit in accounts or payments made from accounts.

Approved February 11, 1997

Filed February 11, 1997

JUDICIAL REMEDIES

CHAPTER 283

HOUSE BILL NO. 1211

(Representatives Wald, Price, Hawken)
(Senators Krebsbach, Nalewaja)

VOLUNTEER CIVIL IMMUNITY

AN ACT to amend and reenact subsection 1 of section 32-03-45 and subdivision a of subsection 1 of section 32-03-46 of the North Dakota Century Code, relating to civil immunity for certain volunteers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 32-03-45 of the North Dakota Century Code is amended and reenacted as follows:

1. The person who caused the damage or injury was acting in good faith; ~~in the exercise of reasonable and ordinary care~~, and in the scope of that person's duties as a volunteer for the nonprofit organization.

SECTION 2. AMENDMENT. Subdivision a of subsection 1 of section 32-03-46 of the North Dakota Century Code is amended and reenacted as follows:

- a. The person who caused the damage or injury was acting in good faith; ~~in the exercise of reasonable and ordinary care~~, and in the scope of that person's duties for the sports team.

Approved March 5, 1997

Filed March 6, 1997

CHAPTER 284

SENATE BILL NO. 2037 (Legislative Council) (Government Organization Committee)

RAILROAD OWNER LIABILITY LIMITED

AN ACT to create and enact a new section to chapter 32-03 and a new section to chapter 49-10.1 of the North Dakota Century Code, relating to the liability of the owner or operator of a railroad for injury of an individual riding on a locomotive or railroad car without authority from the owner or operator and to the determination of train speeds; to amend and reenact sections 49-05-06, 49-06-01, 49-09-04.2, 49-09-04.4, and 49-11-21 of the North Dakota Century Code, relating to the regulation of railroads; and to repeal sections 49-09-04.1, 49-09-05, 49-09-08, 49-09-09, 49-09-11.1, 49-09-11.2, 49-09-11.3, 49-09-11.4, 49-09-11.5, 49-09-11.6, 49-09-11.7, 49-10.1-04, 49-10.1-06, 49-10.1-09, 49-11-10, 49-11-11, 49-11-12, 49-16-11, and 49-17.2-31 of the North Dakota Century Code, relating to the regulation of railroads.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 32-03 of the North Dakota Century Code is created and enacted as follows:

Limited liability of owner or operator of railroad. An individual who is injured while boarding or attempting to board a moving locomotive or railroad car, without authority from the owner or operator of the railroad, or who having boarded a locomotive or railroad car without authority from the owner or operator of the railroad, is injured while riding or getting off the locomotive or railroad car, may not recover any damages from the owner or operator of the railroad for that injury unless the injury is proximately caused by an intentional act of the railroad owner or operator and the railroad owner or operator knew that serious injury was the probable result of the act, or that the owner or operator of the railroad acted with wanton and reckless disregard of the probable result of the act. This section does not exempt a railroad corporation from any liability created under chapter 49-16 or the federal Employer's Liability Act [45 U.S.C. 51 et seq.] for injuries to its employees or agents.

SECTION 2. AMENDMENT. Section 49-05-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-05-06. Hearing by commission on proposed change of rates. Whenever a notice or any schedule stating an individual or joint rate, classification, contract, practice, or rule, or regulation, increasing or decreasing, or resulting in an increase or decrease in any rate, ~~shall be~~ is filed with the commission, the commission may suspend by motion ~~such the~~ the rate, classification, contract, practice, or rule, or regulation, but the period of suspension ~~thereof shall~~ may not extend more than seven months ~~for common carriers by rail and motor vehicle and for other public utilities~~ beyond the time when it otherwise would go into effect. Upon complaint or upon its own initiative without complaint the commission may order a hearing, upon due notice, concerning the propriety of ~~such the~~ the rate, classification, contract, practice, or rule, or regulation. On such hearing, the commission shall establish the rates, classifications, contracts, practices, or rules, or regulations proposed, in whole

or in part, or others in lieu thereof, which it ~~shall find~~ finds to be just and reasonable. At any such hearing, the burden to show that the increased rate or proposed change of rate, classification, ~~regulation~~, rule, or practice is just and reasonable ~~shall be~~ is upon the public utility ~~making application therefor~~ applying for the increase. All such rates, classifications, contracts, practices, or rules, ~~or regulations~~ not ~~so~~ suspended, on the expiration of thirty days from the time of filing ~~the same~~ with the commission, or of such lesser time as the commission may grant, ~~shall go into effect and be the established and become~~ become effective rates, classifications, contracts, practices, or rules, ~~and regulations~~, subject to the power of the commission, after a hearing had on its own motion or upon complaint, to alter or modify the same.

SECTION 3. AMENDMENT. Section 49-06-01 of the North Dakota Century Code is amended and reenacted as follows:

49-06-01. Valuation of property as basis for determining reasonableness of rates - Railroads and motor carriers may be exempted. The commission, for the purpose of ascertaining just and reasonable rates and charges of public utilities, or for any other purpose authorized by law, shall investigate and determine the value of the property of every public utility, except railroads and motor carriers, used and useful for the service and convenience of the public, excluding therefrom the value of any franchise or right to own, operate, or enjoy the same in excess of the amount, exclusive of any tax or annual charge, actually paid to any political subdivision of the state as a consideration for the grant of ~~such~~ the franchise or right, and exclusive of any value of the right by reason of a monopoly or merger. ~~The value of the property of railroads and motor carriers may, in the discretion of the commission, be required in establishing just and reasonable rates and charges. However, unless the commission determines that the value of the property of railroads and motor carriers is pertinent and essential in the establishment of just and reasonable rates and charges, such valuation shall not be made.~~ The commission shall prescribe the details of the inventory of the property of each public utility to be valued.

SECTION 4. AMENDMENT. Section 49-09-04.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-09-04.2. Abandoned railroad right of way - Sale.

1. When service is discontinued on any railroad right of way in the state and the property is offered for sale, lease, exchange, or other disposal by the railroad or an affiliated entity, the property must first be offered for public purposes.
2. If right-of-way property along abandoned rail lines is first offered for public purposes and refused, the lessee operators of grain and potato warehouses located on the property must be given the next option to purchase, lease, exchange, or otherwise acquire the property described in their lease. Adjoining agricultural landowners must thereafter be given the next option to acquire the property adjoining their land.
3. When abandoned railroad right of way is offered for wildlife programs or projects, the proposed acquisitions must first be approved by the board of county commissioners of the county or counties in which the right of way is located under section 20.1-02-17.1 if offered to the state game and fish department or under section 20.1-02-18.1 if offered to the United States department of the interior.

4. This section is subservient to the right of the public service commission to receive rail property in trust under section 49-09-04.1.

SECTION 5. AMENDMENT. Section 49-09-04.4 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-09-04.4. Railroad abandonment - Records to be open to commission. A railway corporation or railroad holding company having identified a railroad line in North Dakota for abandonment pursuant to 49 U.S.C. 10904(e)(2)(B) shall provide the commission or its designated representatives with access to all records directly relating to the railroad line to be abandoned and to the railway corporation or railroad holding company so an accurate assessment can be made of the line's revenues, profits, and losses. After notice of intent to abandon is given to the governor by the railway corporation or railroad holding company, the commission or its representatives may examine the railway corporation's or railroad holding company's records that are directly related to the railroad line to be abandoned to determine the accuracy of the claims concerning the railway line and to determine whether an abandonment protest should be filed with the ~~interstate commerce commission~~ surface transportation board.

SECTION 6. A new section to chapter 49-10.1 of the North Dakota Century Code is created and enacted as follows:

Determination of train speeds. If the governing body of a city proposes to establish a speed limit on trains passing through its corporate limits and an agreement cannot be reached with the railway company operating the railroad, the governing body of the city may file with the commission a petition that sets forth the facts and requests the commission's assistance in resolving the matter.

SECTION 7. AMENDMENT. Section 49-11-21 of the North Dakota Century Code is amended and reenacted as follows:

49-11-21. ~~Bell, horn, or whistle~~ Warning device sounded at crossing by locomotive. A ~~bell of at least thirty pounds [13.61 kilograms] in weight or a steam whistle or an air horn shall~~ warning device must be placed on each locomotive engine and shall must be rung or whistled or sounded at a distance of at least eighty rods [402.34 meters] from the place where the ~~said~~ railroad ~~shall cross~~ crosses any other road or street and ~~shall must continue to be kept ringing or whistling or sounded until it shall have~~ has crossed ~~said~~ the road or street.

SECTION 8. REPEAL. Sections 49-09-05, 49-09-08, 49-10.1-04, 49-10.1-06, 49-10.1-09, 49-11-10, 49-11-11, and 49-11-12 of the North Dakota Century Code and sections 49-09-04.1, 49-09-09, 49-09-11.1, 49-09-11.2, 49-09-11.3, 49-09-11.4, 49-09-11.5, 49-09-11.6, 49-09-11.7, 49-16-11, and 49-17.2-31 of the 1995 Supplement to the North Dakota Century Code are repealed.

Approved April 9, 1997
Filed April 10, 1997

CHAPTER 285

HOUSE BILL NO. 1297

(Representatives Kretschmar, Rennerfeldt, Kilzer)
(Senators Lips, Traynor)

CIVIL ACTION EXEMPLARY DAMAGES

AN ACT to amend and reenact subsection 1 of section 32-03.2-11 of the North Dakota Century Code, relating to exemplary damages; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 32-03.2-11 of the North Dakota Century Code is amended and reenacted as follows:

1. In any action for the breach of an obligation not arising from contract, when the defendant has been guilty by clear and convincing evidence of oppression, fraud, or actual malice, the court or jury, in addition to the actual damages, may give damages for the sake of example and by way of punishing the defendant. Upon commencement of the action, the complaint may not seek exemplary damages. After filing the suit, a party may make a motion to amend the pleadings to claim exemplary damages. The motion must allege an applicable legal basis for awarding exemplary damages and must be accompanied by one or more affidavits or deposition testimony showing the factual basis for the claim. ~~At the hearing on the motion,~~ if The party opposing the motion may respond with affidavit or deposition testimony. If the court finds prima facie evidence in support of the motion, after considering all submitted evidence, that there is sufficient evidence to support a finding by the trier of fact that a preponderance of the evidence proves oppression, fraud, or actual malice, the court shall grant the moving party permission to amend the pleadings to claim exemplary damages. For purposes of tolling the statute of limitations, pleadings amended under this section relate back to the time the action was commenced.

SECTION 2. APPLICATION. This Act applies only to actions commenced after the effective date of this Act.

Approved April 11, 1997
Filed April 11, 1997

CHAPTER 286

HOUSE BILL NO. 1153

(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

RISK MANAGEMENT FUND RECORDS AND CLAIMS

AN ACT to create and enact three new sections to chapter 32-12.2 of the North Dakota Century Code, relating to confidentiality of risk management liability reserve and fund records, meetings and records of agency loss control committees, and contracts between the state and political subdivisions; to amend and reenact sections 32-12.2-01, 32-12.2-02, 32-12.2-03, 32-12.2-04, 32-12.2-07, 32-12.2-08, and 32-12.2-09 of the North Dakota Century Code, relating to definitions, damage limitations, exclusions from liability, employee defense, settlement of claims, payment of claims, and the relationship to insurance coverage of the risk management fund; and to repeal sections 26.1-21-10.1 and 26.1-21-10.2 of the North Dakota Century Code, relating to defense of state employees in tort liability cases and expenses paid from the state bonding fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-12.2-01 of the North Dakota Century Code is amended and reenacted as follows:

32-12.2-01. (Contingent expiration date - see Note) Definitions. As used in this chapter, unless the context otherwise requires:

1. "Claim" means any claim for relief money damages brought against the state or a state employee for an injury caused by the state or a state employee acting within the scope of the employee's employment whether in the state or outside the state.
2. "Injury" means personal injury, death, or property damage.
3. "Occurrence" means an accident, including continuous or repeated exposure to a condition, which results in an injury.
4. "Personal injury" includes bodily injury, mental injury, sickness or disease sustained by a person and injury to a person's rights or reputation.
5. "Property damage" includes injury to or destruction of tangible or intangible property.
6. "Scope of employment" ~~has the same meaning as defined in section 26.1-21-10.1~~ means the state employee was acting on behalf of the state in the performance of duties or tasks lawfully assigned to the employee by competent authority. Actions of a state employee that constitute reckless or grossly negligent conduct, malfeasance, or willful or wanton misconduct are not within the scope of the employee's employment for purposes of this chapter.

7. "State" includes an agency, authority, board, body, branch, bureau, commission, committee, council, department, division, industry, institution, instrumentality, and office of the state.
8. "State employee" means a state employee as defined in section 26.1-21-10.4 every present or former officer or employee of the state or any person acting on behalf of the state in an official capacity, temporarily or permanently, with or without compensation. The term does not include an independent contractor.
9. "State institution" means the state hospital, the developmental center at westwood park, Grafton, the state penitentiary, the Missouri River correctional center, the North Dakota youth correctional center, the school for the blind, ~~and~~ the school for the deaf, and similar facilities providing care, custody, or treatment for individuals.

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

32-12.2-02. (Contingent expiration date - see Note) Liability of the state - Limitations - Statute of limitations.

1. The state may only be held liable for money damages for an injury proximately caused by the negligence or wrongful act or omission of a state employee acting within the employee's scope of employment under circumstances in which the employee would be personally liable to a claimant in accordance with the laws of this state, or an injury caused from some condition or use of tangible property under circumstances in which the state, if a private person, would be liable to the claimant. No claim may be brought against the state or a state employee acting within the employee's scope of employment except a claim authorized under this chapter or otherwise authorized by the legislative assembly.
2. The liability of the state under this chapter is limited to a total of two hundred fifty thousand dollars per person and ~~seven hundred fifty thousand~~ one million dollars for any number of claims arising from any single occurrence. The state may not be held liable, or be ordered to indemnify a state employee held liable, for punitive or exemplary damages. Any amount of a judgment against the state in excess of the ~~seven hundred fifty thousand~~ one million dollar limit imposed under this subsection may be paid only if the legislative assembly adopts an appropriation authorizing payment of all or a portion of that amount. A claimant may present proof of the judgment to the director of the office of management and budget who shall include within the proposed budget for the office of management and budget a request for payment for the portion of the judgment in excess of the limit under this section at the next regular session of the legislative assembly after the judgment is rendered.
3. Neither the state nor a state employee may be held liable under this chapter for any of the following claims:
 - a. A claim based upon an act or omission of a state employee exercising due care in the execution of a valid or invalid statute or rule.

- b. A claim based upon a decision to exercise or perform or a failure to exercise or perform a discretionary function or duty on the part of the state or its employees, regardless of whether the discretion involved is abused or whether the statute, order, rule, or resolution under which the discretionary function or duty is performed is valid or invalid. Discretionary acts include acts, errors, or omissions in the design of any public project but do not include the drafting of plans and specifications that are provided to a contractor to construct a public project.
- c. A claim resulting from the decision to undertake or the refusal to undertake any legislative or quasi-legislative act, including the decision to adopt or the refusal to adopt any statute, order, rule, or resolution.
- d. A claim resulting from a decision to undertake or a refusal to undertake any judicial or quasi-judicial act, including a decision to grant, to grant with conditions, to refuse to grant, or to revoke any license, permit, order, or other administrative approval or denial.
- e. A claim resulting from the assessment and collection of taxes.
- f. A claim resulting from snow or ice conditions, water, or debris on a highway or on a public sidewalk that does not abut a state-owned building or parking lot, except when the condition is affirmatively caused by the negligent act of a state employee.
- g. A claim resulting from any injury caused by a wild animal in its natural state.
- h. A claim resulting from the condition of unimproved real property owned or leased by the state.
- i. A claim resulting from the loss of benefits or compensation due under a program of public assistance.
- j. A claim resulting from the reasonable care and treatment, or lack of care and treatment, of a person at a state institution where reasonable use of available appropriations has been made to provide care.
- k. A claim resulting from damage to the property of a patient or inmate of a state institution.
- l. A claim resulting from any injury to a resident or an inmate of a state institution if the injury is caused by another resident or inmate of that institution.
- m. A claim resulting from environmental contamination, except to the extent that federal environmental law permits the claim.
- n. A claim resulting from a natural disaster, an act of God, a military action, or an act or omission taken as part of a disaster relief effort.
- o. A claim for damage to property owned by the state.

- p. A claim for liability assumed under contract, except this exclusion does not apply to liability arising from a state employee's operation of a rental vehicle if the vehicle is rented for a period of thirty days or less and the loss is not covered by the state employee's personal insurance or by the vehicle rental company.
4. An action brought under this chapter must be commenced within the period provided in section 28-01-22.1.
 5. This chapter does not create or allow any claim that does not exist at common law or has not otherwise been created by law as of April 18 22, 1995.

SECTION 3. AMENDMENT. Section 32-12.2-03 of the North Dakota Century Code is amended and reenacted as follows:

32-12.2-03. (Contingent expiration date - see Note) State to be named in action - Personal liability and defense of employees - Indemnification of claims and final judgments.

1. An action for an injury proximately caused by the alleged negligence, wrongful act, or omission of a state employee occurring within the scope of the employee's employment must be brought against the state.
2. A state employee is not personally liable for money damages for an injury when the injury is proximately caused by the negligence, wrongful act, or omission of the employee acting within the scope of employment.
3. A state employee may not be held liable in the employee's personal capacity for acts or omissions of the employee occurring within the scope of the employee's employment. A state employee may be personally liable for money damages for an injury when the injury is proximately caused by the negligence, wrongful act, or omission of the employee acting outside the scope of the employee's employment. The plaintiff in such an action bears the burden of proof to show by clear and convincing evidence that the employee was acting outside the scope of the employee's employment. The extent to which an employee may be personally liable under this section and whether the employee was acting within the scope of employment must be specifically stated in a final judgment.
4. Except for claims or judgments for punitive damages, the state shall indemnify and save harmless a state employee for any claim, whether groundless or not, and final judgment for any act or omission occurring within the scope of employment of the employee if the employee provides complete disclosure and cooperation in the defense of the claim or demand and if the employee has given written notice of the claim or demand to the head of the state entity that employs the state employee and to the attorney general within ten days after being served with a summons, complaint, or other legal pleading asserting that claim or demand against the state employee.
5. A judgment in a claim against the state is a complete bar to any claim by the claimant, resulting from the same injury, against the employee whose act or omission gave rise to the claim.

6. The state shall defend any state employee in connection with any civil claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring within the scope of the employee's employment if the employee provides complete disclosure and cooperation in the defense of the claim or demand and if the employee requests such defense in writing within ten days after being served with a summons, complaint, or other legal pleading asserting a cause of action against the state employee arising out of a civil claim or demand. The request for defense must be in writing and provided to the head of the state entity that employs the state employee and the attorney general. The head of the state entity that employs the state employee shall advise the attorney general as to whether that person deems the employee's actions that are the subject of the action to have been within the scope of the employee's employment. The determination of whether a state employee was acting within the scope of employment must be made by the attorney general. If the attorney general determines that the employee was acting within the scope of the employee's employment, the state shall provide the employee with a defense by or under the control of the attorney general or the attorney general's appointee. This section is not a waiver, limitation, or modification of any immunity or other defenses of the state or any of its employees, nor does it create any causes of action against the state or any of its employees.
7. For any claim brought under this chapter, a state employee may choose to hire the employee's own separate defense counsel to represent the state employee in the litigation. If the state employee chooses to hire separate defense counsel, subsections 4 and 6 do not apply to the state employee in that litigation and the state will not indemnify, save harmless, or defend the state employee nor pay for the state employee's defense or any judgment against the state employee.

SECTION 4. AMENDMENT. Section 32-12.2-04 of the North Dakota Century Code is amended and reenacted as follows:

32-12.2-04. (Contingent expiration date - see Note) Notice required - Payment of claims.

1. A person bringing a claim against the state or a state employee for an injury shall present to the director of the office of management and budget within one hundred eighty days after the alleged injury is discovered or reasonably should have been discovered a written notice stating the time, place, and circumstances of the injury, the names of any state employees known to be involved, and the amount of compensation or other relief demanded. The time for giving the notice does not include the time during which a person injured is incapacitated by the injury from giving the notice. If the claim is one for death, the notice may be presented by the personal representative, surviving spouse, or next of kin within one year after the alleged injury resulting in the death.
2. ~~Within two working days after~~ After receipt of notice of a claim, the director of the office of management and budget shall ~~forward the notice of a claim to,~~ in a timely manner, notify the head of the state entity involved, the attorney general, and any ~~other~~ insurer or self-insurance pool providing coverage for that state entity. ~~The~~ For claims over five thousand dollars, the director, in consultation with the head of the state entity involved and the attorney general, may settle claims covered by

the state risk management fund: ~~For all claims, a settlement made under this section is not valid unless it is supported by a~~ if the claim is made in writing and settlement is approved and signed by the attorney general. The director of the office of management and budget may independently settle any claim covered by the state risk management fund if the claim is made in writing and the settlement is for not more than five thousand dollars.

3. A claim shall be paid out of the risk management fund unless that claim is covered by insurance or participation in a government self-insurance pool. All necessary loss adjustment expenses must be included as a component of the claim and be paid out of the fund. Loss adjustment expenses include investigation costs and attorney fees associated with a claim.
4. The acceptance by the claimant of a settlement is final and conclusive on the claimant and constitutes a complete release of any claim against the state and the state employee whose act or omission gave rise to the claim.
5. A person bringing a legal action against the state or a state employee for a claim shall deliver a copy of the summons, complaint, or other legal pleading in which the claim is first asserted in the action to the director of the office of management and budget at the time the summons, complaint, or other legal pleading is served in the action. This provision is in addition to any applicable rule of civil procedure.

SECTION 5. AMENDMENT. Section 32-12.2-07 of the North Dakota Century Code is amended and reenacted as follows:

32-12.2-07. (Contingent expiration date - see Note) Risk management fund - Appropriation.

1. The director of the office of management and budget shall implement and administer a program of ~~self-insurance~~ self-retention against liability for the state through the establishment of a risk management fund. Each entity of the state shall participate in the program by contributing the appropriate share of its costs as determined by the director.
2. The state risk management fund is a special fund in the state treasury administered by the director of the office of management and budget. The fund is a revolving fund consisting of contributions from participating state entities and other appropriations by the legislative assembly. The state investment board shall invest the fund in accordance with chapter 21-10. Funds received as contributions from state entities and interest and income received on investments are hereby appropriated for the purposes of the fund. Section 54-44.1-11 does not apply to the fund.
3. The director of the office of management and budget shall:
 - a. Review the state's exposure to various types of potential risks in consultation with affected state entities and advise state entities as to the reduction of risk and fiscal management of those losses.

- b. Be responsible for statewide risk management coordination, evaluation of funding and insuring alternatives, and the approval of all liability insurance purchases or government self-insurance pool participation in consultation with affected state entities.
 - c. Identify methods to eliminate redundant efforts in the management of state risk management and insurance programs.
 - d. Administer the state risk management fund or contract for a third-party administrator.
4. The director of the office of management and budget may request bids from insurance carriers or government self-insurance pools or negotiate with insurance carriers and government self-insurance pools and may enter into contracts of insurance with carriers or memorandums of coverage with government self-insurance pools that are best qualified to underwrite and service insurance or coverage programs for the state through the risk management fund.

SECTION 6. AMENDMENT. Section 32-12.2-08 of the North Dakota Century Code is amended and reenacted as follows:

32-12.2-08. (Contingent expiration date - see Note) Duties of director of the office of management and budget. The director of the office of management and budget is responsible for determining the specifications for liability insurance or coverage for the state. The director shall require an insurance company or government self-insurance pool providing coverage for the state to guarantee that its policy or memorandum of coverage provides minimum coverages pursuant to required specifications and is primary coverage to any coverage under the risk management fund.

SECTION 7. AMENDMENT. Section 32-12.2-09 of the North Dakota Century Code is amended and reenacted as follows:

32-12.2-09. (Contingent expiration date - see Note) Insurance no waiver of immunity. No purchase of insurance or participation in a government self-insurance pool or self-retention fund by the state may be construed as a waiver of any immunity to suit.

SECTION 8. A new section to chapter 32-12.2 of the North Dakota Century Code is created and enacted as follows:

Certain records relating to claims against the state or state employees privileged and exempt from open records law.

1. The following records are privileged and are not subject to section 44-04-18 or section 6 of article XI of the Constitution of North Dakota:
 - a. Records containing information relating to that portion of the funds or liability reserves of the risk management fund established for the purpose of satisfying a specific pending or reasonably predictable claim against the state or a state employee; and
 - b. Incident reports, investigation reports, or other risk management fund records of a pending or reasonably predictable claim against the state or a state employee.

2. The office of management and budget shall make available for public disclosure records identified in subsection 1 when disclosure of the record will not prejudice any outstanding claim or reasonably predictable claim against the state or a state employee, all civil litigation or adversarial administrative proceedings, including the exhaustion of all appellate remedies, have been completed, and, in the case of reasonably predictable claims, the applicable statute of limitations has expired.

SECTION 9. A new section to chapter 32-12.2 of the North Dakota Century Code is created and enacted as follows:

State agency loss control committee records and meetings privileged and exempt from open records and open meetings law. The portions of the records and meetings of any state agency loss control committee dealing with confidential records are not public records or public meetings subject to sections 44-04-18 and 44-04-19 and sections 5 and 6 of article XI of the Constitution of North Dakota. Those records and meetings of the committee are privileged and are not subject to subpoena or discovery or introduction into evidence in any civil action. The records of the committee include all information, data, reports, or records created by or made available to the committee. Any information, data, report, or record otherwise available from original sources is not confidential or immune from discovery or use in any civil action merely because it was presented or considered during the proceedings of the committee. A person who testified before the committee or who is a member of the committee may testify as to matters within that person's knowledge but may not be asked about the records of, the testimony before, or the discussions of the committee. This section does not relieve any person of any liability incurred as a result of actions reviewed by the committee.

SECTION 10. A new section to chapter 32-12.2 of the North Dakota Century Code is created and enacted as follows:

Contract between the state and a political subdivision. A contract between the state and a political subdivision may not contain a provision that requires one party to assume the liability of the other or the liability of a third party or to bear the costs of defense of actions against the other or against a third party, unless the agreement is entered into in good faith and is set forth in a separate writing signed by both parties and supported by adequate consideration which must be stated in the agreement.

SECTION 11. REPEAL. Sections 26.1-21-10.1 and 26.1-21-10.2 of the North Dakota Century Code are repealed.

Approved April 4, 1997
Filed April 4, 1997

CHAPTER 287**HOUSE BILL NO. 1399**
(Representatives Oban, Mahoney)
(Senator Watne)**WRONGFUL DEATH ACTION PARTIES**

AN ACT to amend and reenact section 32-21-03 of the North Dakota Century Code, relating to persons who may bring a wrongful death action.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-21-03 of the North Dakota Century Code is amended and reenacted as follows:

32-21-03. Who may bring action. The action shall be brought by the following persons in the order named:

1. The surviving husband or wife, if any.
2. The surviving children, if any.
3. The surviving mother or father.
4. A surviving grandparent.
5. The personal representative.
6. A person who has had primary physical custody of the decedent before the wrongful act.

If any person entitled to bring the action refuses or neglects so to do for a period of thirty days after demand of the person next in order, ~~such~~ that person may bring the ~~same~~ action.

Approved April 3, 1997
Filed April 3, 1997

CHAPTER 288

HOUSE BILL NO. 1176

(Representatives Nicholas, Nichols, Olson)
(Senators Nalewaja, Wanzek, Tomac)

AGRICULTURAL PRODUCT DEFAMATION

AN ACT to provide for damages for defamation of agricultural products and management practices; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires:

1. "Agricultural producer" means any person engaged in growing, raising, distributing, or selling an agricultural product, or manufacturing the product for consumer use.
2. "Agricultural product" means any plant or animal, or the product of a plant or animal, grown, raised, distributed, or sold for a commercial purpose; the term also includes any agricultural practices used in the production of such products.
3. "Defamatory statement" means intentional words or conduct which reflects on the character or reputation of another or upon the quality, safety, or value of another's property in a manner which tends:
 - a. To lower another in the estimation of the community;
 - b. To deter third persons from dealing with another; or
 - c. To deter third persons from buying the products of another.
4. "Disseminate" means to publish or otherwise convey a statement to a third party but does not include repeating a false and defamatory statement made by another unless the person repeating the statement knew the statement was false.
5. "False statement" means a statement that either expressly includes a fact or implies a fact as justification for an opinion and the fact is not based upon reasonable and reliable scientific inquiry, data, or facts.
6. "Knowing the statement to be false" means the communicator knew the statement was false or acted with reckless disregard of whether the statement was false.

SECTION 2. Civil liability for defamation of agricultural producers. A person who willfully or purposefully disseminates a false and defamatory statement, knowing the statement to be false, regarding an agricultural producer or an agricultural product under circumstances in which the statement may be reasonably expected to be believed and the agricultural producer is damaged as a result, is liable to the agricultural producer for damages and other relief allowed by law in a court

of competent jurisdiction, including injunctive relief and compensatory and exemplary damages. If it is found by a court or jury that a person has maliciously disseminated a false and defamatory statement regarding an agricultural product or agricultural producer, the agricultural producer may recover up to three times the actual damages proven and the court must order that the agricultural producer recover costs, disbursements, and actual reasonable attorneys' fees incurred in the action.

SECTION 3. Persons entitled to claim for relief. In addition to the provisions of section 2 of this Act, if a false and defamatory statement is disseminated referring to an entire group or class of agricultural producers or products, a cause of action arises in favor of each producer of the group or class and any association representing an agricultural producer, regardless of the size of the group or class. Each cause of action by a producer or an association representing an agricultural producer in such case is limited to the actual damages of the producer, injunctive relief, and exemplary damages.

SECTION 4. Statute of limitations. Any civil action for damages under this Act must be commenced within two years from the date of the false and defamatory statement.

Approved March 27, 1997
Filed March 27, 1997

COUNTY JUSTICE COURT

CHAPTER 289

HOUSE BILL NO. 1345

(Representatives Stenehjem, DeKrey, Delmore)
(Senators C. Nelson, W. Stenehjem, Watne)

EVICTION ACTION SERVICE OF PROCESS

AN ACT to amend and reenact section 33-06-02 of the North Dakota Century Code, relating to service of process in eviction actions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 33-06-02 of the North Dakota Century Code is amended and reenacted as follows:

33-06-02. Appearance - Notice of intention to evict - When required - When and how served. In any action for eviction the time specified in the summons for the appearance of the defendant may not be less than three nor more than fifteen days from the date on which it is issued. If the person cannot be found in the county, of which the return of the sheriff or process server is prima facie proof, and service has been attempted at least once between the hours of 6:00 p.m. and 10:00 p.m. upon the filing of an affidavit of the plaintiff or the plaintiff's attorney stating that the defendant cannot be found or on belief that the defendant is not in this state and a copy of the summons has been mailed to the defendant at the defendant's last known address if any is known to the plaintiff, service of the summons may be made upon the defendant by the sheriff or process server posting the summons upon the door of the residential unit. In all cases arising under subsections 4, 5, 6, and 8 of section 33-06-01, three days' written notice of intention to evict must be given to the lessee, subtenant, or party in possession, before proceedings can be instituted. The notice may be served and returned as a summons is served and returned or, if the party cannot be found, then by the sheriff of the county or a process server posting the notice conspicuously upon the premises. Service by delivery of a copy of the summons to the defendant in person within the county must be made at least three days before the time fixed for the appearance of the defendant. Service elsewhere or personal service in any other mode must be made at least seven days before the time fixed for the appearance of the defendant.

Approved March 23, 1997

Filed March 24, 1997

CHAPTER 290**HOUSE BILL NO. 1343**

(Representatives Stenehjem, DeKrey, Delmore)
(Senators Grindberg, C. Nelson, Watne)

EVICTION ACTION RESTITUTION OF PREMISES

AN ACT to amend and reenact section 33-06-04 of the North Dakota Century Code, relating to eviction actions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 33-06-04 of the North Dakota Century Code is amended and reenacted as follows:

33-06-04. Eviction actions not joinable with other actions - Exception - When counterclaims only interposable. An action of eviction cannot be brought in a district court in connection with any other action, except for rents and profits accrued or for damages arising by reason of the defendant's possession. No counterclaim can be interposed in such action, except as a setoff to a demand made for damages or for rents and profits. If the court finds for the plaintiff in the action, the court shall enter judgment that the plaintiff have immediate restitution of the premises. Upon a showing by the defendant that immediate restitution of the premises would work a substantial hardship on the defendant or the defendant's family, except in cases in which the eviction judgment is based in whole or in part on a disturbance of the peace, the court may stay the special execution for a reasonable period, not to exceed five days.

Approved March 23, 1997
Filed March 24, 1997

LABOR AND EMPLOYMENT

CHAPTER 291

HOUSE BILL NO. 1468 (Representatives Mahoney, Murphy)

EMPLOYER RETALIATION PROHIBITED

AN ACT to amend and reenact section 34-01-20 of the North Dakota Century Code, relating to prohibiting employer retaliation against employees for certain conduct.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-01-20 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**34-01-20. Prohibited action - Report of complaint to commissioner of labor
Employer retaliation prohibited - Civil action for relief - Penalty.**

1. An employer may not discharge, discipline, threaten discrimination, or penalize an employee regarding the employee's compensation, conditions, location, or privileges of employment because:
 - a. The employee, or a person acting on behalf of an employee, in good faith, reports a violation or suspected violation of federal or state law or rule to an employer or to a governmental body or law enforcement official.
 - b. The employee is requested by a public body or official to participate in an investigation, hearing, or inquiry.
 - c. The employee refuses an employer's order to perform an action that the employee believes violates state or federal law or rule or regulation. The employee must have an objective basis in fact for that belief and shall inform the employer that the order is being refused for that reason.
2. ~~The employee may seek the assistance of the commissioner of labor, who may use the authority of chapters 34-06 and 34-14 to investigate, hold hearings, and otherwise assure compliance with this section.~~
3. An employer who willfully violates this section is guilty of an infraction.
3. An employee asserting a violation of this section may bring a civil action for injunctive relief or actual damages, or both, within ninety days after the alleged violation, completion of proceedings under subsection 4, or completion of any grievance procedure available to the employee under the employee's collective bargaining agreement, employment contract, or any public employee statute, rule, or policy, whichever is later. If the

court determines that a violation has or is occurring under this section, the court may order, as the court deems appropriate, reinstatement of the employee, back pay for no more than two years after the violation, reinstatement of fringe benefits, temporary or permanent injunctive relief, or any combination of these remedies. Interim earnings or amounts earnable with reasonable diligence by the employee, from the same employer, must reduce back pay otherwise allowable. In any action under this section, the court may award reasonable attorneys' fees to the prevailing party as part of the costs of litigation. An employee whose collective bargaining agreement, employment contract, or public employee rights provides a process through which recourse for conduct prohibited by subsection 1 is available must exercise that process to completion before commencing an action under this subsection, and if that process provides for judicial review by statutory appeal, then recourse under this subsection is not available.

4. The department of labor may receive complaints of violations of this section and attempt to obtain voluntary compliance with this section through informal advice, negotiation, or conciliation. An employee is not prohibited from filing, or required to file, a complaint with the department of labor under this subsection before proceeding under other provisions of this section.

Approved April 4, 1997
Filed April 4, 1997

CHAPTER 292

HOUSE BILL NO. 1193

(Representatives Skarphol, Wald, Price)
(Senator Andrist)

EMPLOYER REFERENCE IMMUNITY

AN ACT to create and enact a new section to chapter 34-02 of the North Dakota Century Code, relating to references by employers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 34-02 of the North Dakota Century Code is created and enacted as follows:

Immunity for providing employment reference.

1. An employer, or an employer's agent, who truthfully discloses date of employment, pay level, job description and duties, and wage history about a current or former employee to a prospective employer of the employee is immune from civil liability for the disclosure and the consequences of the disclosure of that information.
2. An employer, or an employer's agent, who discloses information about a current or former employee's job performance to a prospective employer of the employee is presumed to be acting in good faith. Unless lack of good faith is shown, the employer or employer's agent is immune from civil liability for the disclosure and the consequences of providing that information. The presumption of good faith may be rebutted by a preponderance of the evidence that the information disclosed was:
 - a. Knowingly false;
 - b. Disclosed with reckless disregard for the truth;
 - c. Deliberately misleading; or
 - d. Rendered with malicious purpose.
3. The immunity provided by subsection 2 does not apply if the information provided is in violation of a nondisclosure agreement, or was otherwise confidential according to applicable law.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 293

HOUSE BILL NO. 1100

(Representative Keiser)

LABOR COMMISSIONER EMPLOYER RECORD CONFIDENTIALITY

AN ACT to amend and reenact sections 14-02.4-21 and 34-05-03 of the North Dakota Century Code, relating to records and information furnished to the labor commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-02.4-21 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.4-21. Optional mediation by department of labor - Relief - Appeals - Records exempt. The department of labor may receive complaints of discriminating employment practices under this chapter and may investigate the complaints to determine if there is probable cause to believe the complaint is meritorious and, if so, attempt to obtain voluntary compliance with this chapter's employment requirements through informal advice, negotiation, or conciliation. This chapter does not prohibit a person from filing, or require a person to file, a complaint with the department of labor before using the provisions of this chapter. A complaint received and information obtained during any investigation conducted under this section are exempt from section 44-04-18 before the institution of any judicial proceedings under this chapter. The commissioner may disclose to the complainant or the respondent, or attorneys for the complainant or respondent, information obtained under this section if deemed necessary by the commissioner for securing an appropriate resolution of a complaint. Any record or information held by the department of labor pursuant to an agreement with any federal agency for the enforcement of fair employment practices is exempt from section 44-04-18, and the department of labor may disclose to federal officials information obtained under this section if appropriate to carry out the enforcement of fair employment practices pursuant to the agreement. The department of labor may not disclose anything said or done as part of the informal negotiation or conciliation efforts under this section.

SECTION 2. AMENDMENT. Section 34-05-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-05-03. Officials and employers to furnish certain information - Records - Penalty. All public officers and all employers shall furnish to the commissioner of labor such information as the commissioner may request relating to their respective offices or businesses. The information obtained must be preserved, systemized, and tabulated by the commissioner. Information concerning the business or affairs of any person may not be divulged or made public by the commissioner or anyone in the employ of the commissioner's office; provided, that the Any information collected, records, and determinations made under chapter 34-14, information collected under this section from private employers, and information collected under section 34-06-02 from private employers are exempt from section 44-04-18. The

commissioner shall disclose information collected, records, and determinations made to the parties to an investigation under chapter 34-14. When the commissioner enforces collection of a wage claim by judicial action or forwards records, information, or determinations to another state or country for enforcement as authorized under chapter 34-14, the information collected, records, and determinations made under chapter 34-14 are open records. The commissioner may publish aggregate employment-related statistics. The commissioner may provide a list of the names and addresses of employers to other agencies or to a private entity for the purpose of jointly publishing or distributing publications or other information as provided in section 54-06-04.3. Any information so provided may only be used for the purpose of jointly publishing or distributing publications or other information as provided in section 54-06-04.3. Any officer, ~~any~~ employer, ~~and any~~ or operator or manager of any establishment wherein persons are employed, who fails or refuses to furnish the commissioner with the information requested under the provisions of this section, is guilty of a class B misdemeanor. ~~No prosecution may be commenced for a violation of the provisions of this section relating to the furnishing of information until a second blank has been mailed to the defaulting officer or employer and that person has been given twenty days to complete and return the same.~~

Approved April 8, 1997

Filed April 8, 1997

CHAPTER 294**SENATE BILL NO. 2205**
(Senators Grindberg, Krauter)**WAGE AND HOUR SUMMARY MAILING**

AN ACT to amend and reenact section 34-06-12 of the North Dakota Century Code, relating to wage, hour, and conditions of labor orders issued by the commissioner of labor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-06-12 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-06-12. Order issued by commissioner - Effective date - Posting. After the hearing provided for in section 34-06-11 has been held, the commissioner may make and render ~~such any~~ order as may be necessary and proper to adopt ~~such the~~ recommendations and to carry the same recommendations into effect, and to require all employers in the occupation affected thereby to observe and comply with ~~such the~~ recommendations and order. The order made by the commissioner becomes effective on the sixtieth day following its rendition. After the order has become effective, ~~no~~ An employer may not violate or disregard the terms or provisions thereof or employ any employee in any occupation covered thereby for longer hours or under different conditions or at a lower wage scale than are authorized therein. All effective orders must be reviewed annually of the order. A copy ~~The commissioner shall mail a summary of such the order must be mailed by the commissioner to every employer affected thereby, and each such by the order.~~ The employer shall keep a copy of the order posted in a conspicuous place in a commonly frequented area of the employer's establishment in which employees work.

Approved March 5, 1997

Filed March 6, 1997

CHAPTER 295

HOUSE BILL NO. 1197

(Representatives Poolman, R. Kelsch)
(Senators Grindberg, B. Stenehjem)

MINIMUM WAGE SPECIAL LICENSE EXEMPTION

AN ACT to amend and reenact section 34-06-15 of the North Dakota Century Code, relating to issuing special licenses to employ at less than minimum wage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-06-15 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-06-15. Special license to employ at less than minimum wage. The commissioner may issue to an employee whose productive capacity for the work to be performed is impaired by physical or mental disability, or to any apprentice student or learner enrolled in an occupation that usually requires learners or apprentices a vocational education or related program, a special license authorizing the employment of that licensee ~~in an occupation in which a minimum wage has been established~~, at a wage less than the minimum wage ~~for that occupation~~. The commissioner may also issue special licenses to community rehabilitation programs for the handicapped which engage in the occupation and responsibility of representing and placing for the purpose of training, learning, or employment of those employees whose productive capacity for the work to be performed is impaired by physical or mental disability. The commissioner shall issue ~~the license~~ such licenses under rules adopted by the commissioner.

Approved March 23, 1997

Filed March 24, 1997

CHAPTER 296**SENATE BILL NO. 2162**

(Senator Holmberg)

EQUAL PAY LAW POSTING REPEALED

AN ACT to repeal section 34-06.1-08 of the North Dakota Century Code, relating to posting of copies of the equal pay law by the commissioner of labor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 34-06.1-08 of the North Dakota Century Code is repealed.

Approved March 5, 1997

Filed March 6, 1997

CHAPTER 297

SENATE BILL NO. 2317

(Senator Naaden)

(Representative Boehm)

SCHOOL-TO-WORK PROGRAM EXEMPTIONS

AN ACT to amend and reenact sections 34-07-02 and 34-07-15 of the North Dakota Century Code, relating to school-to-work program exemptions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-07-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-07-02. Certificate of employment required - Inspection - List of minors employed to be kept. No minor fourteen or fifteen years of age may be employed or permitted to work in any occupation except a ~~school-to-work transition program approved by the commissioner of labor at the request of the North Dakota school-to-work transition team,~~ farm labor, domestic service, or in the employment of, and under the direct supervision of, the minor's parent or guardian unless the minor has graduated from high school or is exempt from compulsory school attendance or, unless the minor has an employment certificate signed by the minor's parent or guardian in accordance with the provisions of this chapter. Any person, firm, corporation, or limited liability company employing a minor must keep on file a completed employment certificate, for each minor, as provided in this chapter. The employment certificate must be accessible to inspection by the principal of the school which the minor attends, a principal in the municipality in which the minor resides, or the commissioner of labor or the commissioner's agent or representative.

SECTION 2. AMENDMENT. Section 34-07-15 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-07-15. Maximum hours of labor of minors fourteen or fifteen years of age - Notice to be posted. No minor fourteen or fifteen years of age may be employed or permitted to work at any occupation, except in a ~~school-to-work transition program approved by the commissioner of labor at the request of the North Dakota school-to-work transition team,~~ domestic services and at farm labor, before the hour of seven a.m. nor after the hour of seven p.m., except that ~~such~~ these hours are seven a.m. to nine p.m. from June first through labor day, nor more than eighteen hours during schoolweeks, nor more than three hours on schooldays, nor more than forty hours during nonschoolweeks, nor more than eight hours on nonschooldays. A schoolweek is considered to be any week Monday through Sunday in which a youth is required to be in attendance, for any period of time, four or more days. Provided, however, that the limitations restricting hours of work during schoolweeks and schooldays do not apply to minors who are not attending school because they are excepted from compulsory school attendance by the provisions of chapter 15-34.1. Every employer shall post in a conspicuous place where minors are employed, a printed notice stating the hours of work required of the minors each day of the week, the hours of commencing and stopping work, and the hours

allowed for dinner or other meals. The printed form of ~~such~~the notice must be furnished by the commissioner of labor. The employment of any minor for a longer period than that stated in the notice is a violation of this chapter.

Approved March 21, 1997

Filed March 21, 1997

CHAPTER 298

HOUSE BILL NO. 1175

(Representatives Clark, R. Kelsch, Mickelson)

EMPLOYMENT CERTIFICATE CONTENTS

AN ACT to amend and reenact section 34-07-12 of the North Dakota Century Code, relating to the contents of employment certificates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-07-12 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-07-12. Contents of employment certificate. The employment certificate must state the date and place of birth of the minor, ~~the color of the minor's hair and eyes, the minor's height and weight, any distinguishing facial marks of such minor,~~ a description of the job duties and responsibilities of the minor, and must also be signed by the minor's parent or guardian and the employer.

Approved March 5, 1997

Filed March 6, 1997

CHAPTER 299

SENATE BILL NO. 2143 (Senators Klein, Fischer, Thane) (Representatives R. Kelsch, Stenehjem)

EMPLOYMENT AGENCY LICENSES AND REFUNDS

AN ACT to amend and reenact sections 34-13-01, 34-13-02, and subsection 1 of section 34-13-13.1 of the North Dakota Century Code, relating to employment agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-13-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-13-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Commissioner" means the commissioner of labor.
2. "Employee" means any person, whether employed or unemployed, seeking or entering into any arrangement for employment or change of employment through the medium of service of an employment agent.
3. "Employer" means any person, firm, corporation, limited liability company, or association employing or seeking to enter into an arrangement to employ any person through the medium or service of an employment agent.
4. "Employment agent" or "employment agency" means any person, firm, corporation, limited liability company, or association in this state engaged for hire or compensation in the business of furnishing:
 - a. Persons seeking employment or changing employment, with information or other service enabling or tending to enable such persons to procure employment, by or with employers, other than such employment agent; or
 - b. Any other person, firm, corporation, limited liability company, or association who may be seeking to employ or may be in the market for help of any kind, with information enabling or tending to enable such other person, firm, corporation, limited liability company, or association to procure such help.

The term "employment agent" or "employment agency" does not include any person, firm, corporation, limited liability company, or association employing individuals to render part-time or temporary services to or for a third person, if the person, firm, corporation, limited liability company, or association employing the individuals, in addition to wages or salaries, pays social security and unemployment insurance taxes, provides workers' compensation coverage, and is responsible for the acts of the employees while rendering services to or for a third person.

5. "Gross misconduct" means misconduct involving assault and battery, the malicious destruction of property, or the theft of money or property.

SECTION 2. AMENDMENT. Section 34-13-02 of the North Dakota Century Code is amended and reenacted as follows:

34-13-02. License required - Penalty. ~~No~~ A person may not open or carry on an employment agency ~~in~~ if that person has a physical presence or location within the state, unless such that person first procures a license from the commissioner. ~~Any~~ A person opening or conducting any such agency without first procuring a license is guilty of a class B misdemeanor.

SECTION 3. AMENDMENT. Subsection 1 of section 34-13-13.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. If an employment position terminates or the employee is fired or laid off before the end of ninety calendar days, the employee shall receive a refund of all service charges paid in excess of twenty percent of the gross wages actually received prior to termination or release. If the employee has a signed contract accepting an employment position but does not start employment, quits the job voluntarily, or is terminated for gross misconduct, the refund does not apply. Nothing contained in this section restricts an agency from receiving full-service charges at the time of the referral, subject to the refund herein provided.

Approved March 13, 1997

Filed March 13, 1997

CHAPTER 300**HOUSE BILL NO. 1466**
(Representatives Mahoney, Berg)**LABOR COMMISSIONER WAGE CLAIM
ENFORCEMENT**

AN ACT to amend and reenact sections 34-14-05 and 34-14-09 of the North Dakota Century Code, relating to investigation and enforcement of wage claims by the labor commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-14-05 of the North Dakota Century Code is amended and reenacted as follows:

34-14-05. Enforcement. It is the duty of the commissioner of labor or ~~his~~ the commissioner's deputy to ensure compliance with the provisions of this chapter, to investigate as to any violations of this chapter, and to institute or cause to be instituted actions for penalties and forfeitures provided hereunder. The commissioner or ~~his~~ the commissioner's deputy may hold hearings ~~to satisfy himself as to the justice on the merits~~ of any claim, and ~~he~~ shall cooperate with any employee in the enforcement of a claim against ~~his~~ the employee's employer in any case whenever, in ~~his~~ the commissioner's opinion, the claim is valid. The commissioner may consider any offsets, deductions, or counterclaims asserted by an employer during the commissioner's investigation and determination of the validity, enforceability, and amount of any claim for wages. An employer must disclose the basis for and the amount of any claimed offset, deduction, or counterclaim to the commissioner within the time the commissioner directs. The commissioner and ~~his~~ the commissioner's authorized representatives have the right to enter places of employment for the purpose of inspecting records and seeing that all provisions of this chapter are complied with.

SECTION 2. AMENDMENT. Section 34-14-09 of the North Dakota Century Code is amended and reenacted as follows:

34-14-09. Employees' remedies. Whenever the commissioner of labor determines that wages have not been paid; and that such unpaid wages constitute an enforceable claim, the commissioner ~~shall~~, upon the request of the employee, may take an assignment in trust for such wages or any claim for liquidated damages; in amounts the commissioner deems valid and enforceable without being bound by any of the technical rules respecting the validity of any such assignments and may bring any legal action necessary to collect such claim. With the consent of the assigning employee at the time of the assignment, the commissioner has the power to settle and adjust any such claim to the same extent as might the assigning employee.

Approved March 25, 1997
Filed March 26, 1997

LIENS

CHAPTER 301

SENATE BILL NO. 2218

(Senator Urlacher)

CROP MORTGAGES AND LIENS

AN ACT to amend and reenact sections 35-05-01 and 35-05-01.1 of the North Dakota Century Code, relating to crop mortgages; and to repeal section 35-05-04 of the North Dakota Century Code, relating to security agreements covering specific crops.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-05-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-05-01. Security agreement on crops prohibited - Exceptions. Security interests in growing and unharvested crops are prohibited, and any security agreement purporting to create a security interest therein is void. The provisions of this section do not apply to any security interest or lien in favor of the United States, this state, any county, or any department or agency of any of them, including the Bank of North Dakota, nor to any financial institution as defined by section 6-01-02 or 21-04-01, nor to any ~~other~~ agricultural cooperative or agricultural lending agency, nor to any security interest created by contract to secure money advanced or loaned for the purpose of paying government crop insurance premiums or to secure the purchase price or the rental or improvement of the land upon which the crops covered by the contract are to be grown.

SECTION 2. AMENDMENT. Section 35-05-01.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-05-01.1. Crop liens - Limitations - Exceptions - Remedies - Penalty. A security interest upon crops attaches only to the crop next maturing after the delivery of the security agreement. The financing statement covering a crop cannot be used to enforce a security interest on any crop other than the crop listed in the security agreement. If the court finds a willful violation of this section, the court shall award a producer the reasonable expenses of maintaining an action, including reasonable attorney's fees. The provisions of this section do not apply to liens by contract given to secure the purchase price or the rental of land upon which the crops covered by the lien are to be grown or to a security interest upon crops created by a security agreement that contains an after-acquired property clause and the following wording or its equivalent, in boldface print or set forth in some other conspicuous manner, is in the agreement: "This security agreement covers crops now growing. This security agreement also covers future crops to be grown in the current year or any year hereafter." The lien on future crops maintains its priority as to crops grown in future years only so long as the lienholder continues to provide operating funds to the borrower. If, in any subsequent year, another entity entitled to a crop security interest under section 35-05-01 advances operating funds to a borrower, the entity

has a first priority purchase money security interest in the crops grown by the borrower during the year in which the funds are advanced.

SECTION 3. REPEAL. Section 35-05-04 of the 1995 Supplement to the North Dakota Century Code is repealed.

Approved April 2, 1997

Filed April 3, 1997

CHAPTER 302

SENATE BILL NO. 2323

(Senators Mathern, Heitkamp)

CENTRAL NOTICE SYSTEM REPAIRMAN'S LIEN ENTRY

AN ACT to amend and reenact section 35-13-02 and subsection 3 of section 41-09-46 of the North Dakota Century Code, relating to entering liens for repairman's liens in the central notice system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-13-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-13-02. Lien statement - Contents - When required - Filing.

1. The secretary of state shall prescribe one form that must be used to obtain a lien under this section and gain protection under the central notice system. A person entitled to a lien under this chapter who retains possession of the property made, altered, or repaired is not required to file any statement to perfect the lien. If the possession of the property so made, altered, or repaired is relinquished, the person shall file, within ninety days, or if the property is used for agricultural purposes within one hundred twenty days, or in the exploration for or the production of oil or gas within six months, after the materials are furnished or the labor is completed, in the office of the register of deeds of the county in which the owner or legal possessor of the property resides, a verified written statement showing:
 - ~~4.~~ a. The labor performed.
 - ~~2.~~ b. The materials furnished.
 - ~~3.~~ c. The price agreed upon for the labor performed or materials furnished, or, if no price was agreed upon, the reasonable value thereof.
 - ~~4.~~ d. The name of the person for whom the labor was performed or to whom the materials were furnished.
 - ~~5.~~ e. The social security number, if available, or, in the case of a debtor doing business other than as an individual, the internal revenue service taxpayer identification number, if available, of the person for whom the labor was performed or to whom the materials were furnished.
 - f. The name and address of the person claiming the lien.
 - g. A description of the property upon which the lien is claimed.

2. A person filing a verified statement shall within thirty days serve notice of the filing, by registered mail, upon the owner or legal possessor of the property. A person entitled to the lien who fails to file a verified statement within the time limited in this section is deemed to have waived the right to a lien.
3. A lienholder may file an amendment to add or correct the social security number or internal revenue service taxpayer identification number of the debtor, to correct the spelling of the debtor's or lienholder's name, or to correct or change the address of the lienholder. The secretary of state shall prescribe a form that may be used to amend the repairman's lien that has been filed pursuant to this section. The amendment of the lien does not affect the priority of the lien.

¹ **SECTION 2. AMENDMENT.** Subsection 3 of section 41-09-46 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The secretary of state shall develop and implement a computerized central notice system which must contain the information filed with the office of the secretary of state or with any of the offices of the registers of deeds in this state pursuant to sections 35-13-02, 35-17-04, 35-30-02, 35-31-02, and 41-09-40. The system must connect each ~~registers~~ register of deeds' office to the secretary of state's office through the information services division. The system must allow access to financing statement information by equipment that conforms to requirements determined by the information services division. The system must have safeguards to allow access to information that is in the system relating to security interests or liens and to prevent unauthorized alteration or deletion of that information and to allow access to other information in the system as prescribed by the secretary of state. Within one working day of receipt of a financing statement, continuation statement, amendment, or termination statement filed pursuant to this chapter or a statement filed pursuant to section 35-13-02, 35-17-04, 35-30-02, or 35-31-02, the register of deeds or secretary of state shall record the information contained in the statement in the computerized central notice system. A computer printout of information from the system is prima facie evidence of the existence or nonexistence of the filing of a financing statement or lien. From the computerized central notice system, the secretary of state or a designee shall produce each month one list for crops and one list for livestock which contain the information as filed on the forms pursuant to section 41-09-40. The secretary of state shall also include the information filed for crops and livestock pursuant to sections 35-17-04, 35-30-02, and 35-31-02. The list must be in alphabetical order according to the last name of, or in numerical order according to the social security number of, the person engaged in farming operations.

¹ Section 41-09-46 was also amended by section 3 of Senate Bill No. 2279, chapter 304.

The lists may be prepared in categories according to county, regions as designated by the secretary of state, or on a statewide basis. If requested, the lists must be in printed form and on microfiche. Each list must conspicuously note its effective date.

Approved April 2, 1997

Filed April 3, 1997

CHAPTER 303

SENATE BILL NO. 2272

(Senators Solberg, Kinnoin, Sand)
(Representatives Aarsvold, D. Johnson, Nelson)

CENTRAL NOTICE SYSTEM LIEN TERMINATION

AN ACT to amend and reenact sections 35-17-08, 35-30-06, 35-31-06, and subsection 1 of section 41-09-43 of the North Dakota Century Code, relating to termination of statutory liens filed under the central notice system; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-17-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-17-08. Fees - Penalty. The fee for filing an agister's lien with the secretary of state or the county register of deeds is five dollars. The fee for filing a termination statement is five dollars. The termination fee must be paid at the time the fee for filing the lien is paid. The fee for filing an amendment or assignment of an agister's lien is five dollars. If a lienholder fails to file a termination statement within sixty days after the lien is satisfied, the lienholder is liable to the debtor for one hundred dollars.

SECTION 2. AMENDMENT. Section 35-30-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-30-06. Fees - Penalty. The fee for filing an agricultural processor's lien with the secretary of state or the county register of deeds is five dollars. The fee for filing a termination statement is five dollars. The termination fee must be paid at the time the fee for filing the lien is paid. The fee for filing an amendment or assignment of an agricultural processor's lien is five dollars. If a lienholder fails to file a termination statement within sixty days after the lien has been satisfied, the lienholder is liable to the debtor for one hundred dollars.

SECTION 3. AMENDMENT. Section 35-31-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-31-06. Fees - Penalty. The fee for filing an agricultural supplier's lien with the secretary of state or the county register of deeds is five dollars. The fee for filing a termination statement is five dollars. The termination fee must be paid at the time the fee for filing the lien is paid. The fee for filing an amendment or assignment of an agricultural supplier's lien is five dollars. If a lienholder fails to file a termination statement within sixty days after the lien has been satisfied, the lienholder is liable to the debtor for one hundred dollars.

SECTION 4. AMENDMENT. Subsection 1 of section 41-09-43 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. If a financing statement covering consumer goods is filed on or after January 1, 1974, then within one month or within ten days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed, a termination statement to the effect that the secured party no longer claims a security interest under the financing statement, which shall be identified by file number. In other cases where there is no outstanding secured obligation and no written commitment between the secured party and the debtor to make advances, incur obligations, or otherwise give value, the secured party, unless requested by the debtor in writing to continue the filing, must send to the debtor on written demand by the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that the secured party no longer claims a security interest under the financing statement nor under the central notice system, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record complying with subsection 2 of section 41-09-44, including payment of the required fee, if any. If the affected secured party fails to file a termination statement as required by this subsection; ~~or to send a termination statement within ten days after proper demand,~~ within sixty days of when the secured obligation is fully satisfied, and the debtor has not requested in writing that the filing be continued, then the secured party is liable to the debtor for one hundred dollars, and in addition, for any loss caused to the debtor by such failure. If the affected secured party fails to file a termination statement within ten days after proper written demand by the debtor, then the secured party is liable to the debtor for one hundred dollars, and in addition, for any loss caused to the debtor by such failure.

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 304

SENATE BILL NO. 2279

(Senator Tallackson)
(Representative Wald)

UNPAID INSURANCE PREMIUM LIEN

AN ACT to create and enact a new section to chapter 35-20 of the North Dakota Century Code, relating to liens for unpaid earned property or casualty insurance premiums; and to amend and reenact section 35-20-16 and subsection 3 of section 41-09-46 of the North Dakota Century Code, relating to entering liens for unpaid earned property or casualty insurance premiums in the central notice system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-20-16 of the North Dakota Century Code is amended and reenacted as follows:

35-20-16. Procedure to obtain unpaid earned property or casualty insurance premium lien - Filing. The secretary of state shall prescribe a form that can be used to obtain a lien under this section and also be entered in the central notice system. Any person entitled to an unpaid earned property or casualty insurance premium lien, within ninety days after termination of coverage, shall file in the office of the register of deeds of the county or counties in which the property covered by the policy is located and with any loss payee named in the policy, a verified statement in writing stating all of the following:

1. The name and address of the policyholder.
2. The name and address of the lienholder.
3. The social security number of the debtor, or in the case of a debtor doing business other than as an individual, the internal revenue service taxpayer identification number of that person.
4. The nature and quantity of insurance coverage provided.
- ~~3.~~ 5. The amount of unpaid earned premium.
- ~~4.~~ 6. A description of the property covered by the insurance and subject to the lien.
- ~~5.~~ 7. That a lien is claimed upon the property described.

SECTION 2. A new section to chapter 35-20 of the North Dakota Century Code is created and enacted as follows:

Amendment of lien for unpaid earned property or casualty insurance premiums.
A lienholder may file an amendment to correct the social security or internal revenue service taxpayer identification number of the debtor, to correct the spelling of the debtor's or lienholder's name, or to correct or change the address of the debtor or lienholder. The secretary of state shall prescribe a form that may be used

to amend or assign the unpaid earned property or casualty insurance premium lien that has been filed under section 35-20-15. The amendment or assignment of a lien does not affect the priority of the lien.

² **SECTION 3. AMENDMENT.** Subsection 3 of section 41-09-46 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The secretary of state shall develop and implement a computerized central notice system which must contain the information filed with the office of the secretary of state or with any of the offices of the registers of deeds in this state pursuant to sections 35-17-04, 35-20-16, 35-30-02, 35-31-02, and 41-09-40. The system must connect each ~~registers~~ register of deeds' office to the secretary of state's office through the information services division. The system must allow access to financing statement information by equipment that conforms to requirements determined by the information services division. The system must have safeguards to allow access to information that is in the system relating to security interests or liens and to prevent unauthorized alteration or deletion of that information and to allow access to other information in the system as prescribed by the secretary of state. Within one working day of receipt of a financing statement, continuation statement, amendment, or termination statement filed pursuant to this chapter or a statement filed pursuant to section 35-17-04, 35-20-16, 35-30-02, or 35-31-02, the register of deeds or secretary of state shall record the information contained in the statement in the computerized central notice system. A computer printout of information from the system is prima facie evidence of the existence or nonexistence of the filing of a financing statement or lien. From the computerized central notice system, the secretary of state or a designee shall produce each month one list for crops and one list for livestock which contain the information as filed on the forms pursuant to section 41-09-40. The secretary of state shall also include the information filed for crops and livestock pursuant to sections 35-17-04, 35-30-02, and 35-31-02. The list must be in alphabetical order according to the last name of, or in numerical order according to the social security number of, the person engaged in farming operations. The lists may be prepared in categories according to county, regions as designated by the secretary of state, or on a statewide basis. If requested, the lists must be in printed form and on microfiche. Each list must conspicuously note its effective date.

Approved April 2, 1997
Filed April 3, 1997

² Section 41-09-46 was also amended by section 2 of Senate Bill No. 2323, chapter 302.

CHAPTER 305**SENATE BILL NO. 2198**
(Senator Holmberg)**MOBILE HOME LANDLORD'S LIEN**

AN ACT to create and enact a new section to chapter 35-20 of the North Dakota Century Code, relating to creation of a landlord's lien on a mobile home.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 35-20 of the North Dakota Century Code is created and enacted as follows:

Landlord's mobile home lien. A landlord of a mobile home lot has a lien for storage and removal of any mobile home left on the lot after the tenant has vacated the premises after an eviction or the expiration of the lease term. A lien under this section does not have priority over a prior perfected security interest in the property. A holder of a lien under this section may retain possession of the mobile home subject to the lien until the amount due is paid. A lienholder may sell a mobile home thirty days after the lienholder mails notice of the lien to the owner of the mobile home and secured parties of record. After the sale, the lienholder shall forward to the former owner any money resulting from the sale of the mobile home in excess of the amount owed to the lienholder for storage and removal of the mobile home. If the location of the former mobile home owner is not known, any money from a sale in excess of the amount owed is presumed abandoned under chapter 47-30.1.

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 306

SENATE BILL NO. 2324

(Senators Thompson, Traynor)
(Representatives D. Johnson, Nichols)

AGRICULTURAL PROCESSOR AND SUPPLIER LIEN FILING

AN ACT to amend and reenact sections 35-30-01, 35-30-02, 35-31-01, and 35-31-02 of the North Dakota Century Code, relating to the filing of agricultural processor's liens and agricultural supplier's liens.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-30-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-30-01. Agricultural processor's lien authorized. Any person who processes any crop or agricultural product is entitled to a lien upon the crop or product processed for the reasonable value of the services performed. A lien taken pursuant to this section upon anything other than the crop or product processed is void. As used in this chapter, the term "processor" includes persons threshing, combining, drying, or harvesting any crop or agricultural product. The agricultural processor's lien is effective from the date the processing is completed. An agricultural processor's lien filed as a security interest created by contract to secure money advanced or loaned for any purpose is not effective to secure a priority over liens filed under section 35-05-01.

SECTION 2. AMENDMENT. Section 35-30-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-30-02. Procedure to obtain lien. To obtain an agricultural processor's lien, the person entitled to the lien, within ninety days after the processing is completed, shall file a verified statement in the office of the register of deeds in any county in this state or in the office of the secretary of state. The statement must contain the following information:

1. The name and address of the person for whom the processing was done.
2. The name and address of the processor.
3. A description of the crops or agricultural products and their amount, if known, subject to the lien together with ~~the legal~~ a reasonable description, including the county as to the location where the crops or agricultural products were grown and the year the crop is to be harvested or was harvested.
4. The price agreed upon for processing, or if no price was agreed upon, the reasonable value of the processing.

5. The social security number or, in the case of a debtor doing business other than as an individual, the internal revenue service taxpayer identification number of the person for whom the processing was done.
6. A description of the processing services and the first date the services were furnished.

The secretary of state shall prescribe one form that can be used to obtain a lien under this section or gain protection under the central notice system, or both. Before a processor's lien is filed, a billing statement for the services performed must include notice to the agricultural producer that if the amount due to the agricultural processor is not satisfied a lien may be filed.

SECTION 3. AMENDMENT. Section 35-31-01 of the North Dakota Century Code is amended and reenacted as follows:

35-31-01. Agricultural supplier's lien authorized. Any person who furnishes supplies used in the production of crops, agricultural products, or livestock is entitled to a lien upon the crops, products produced by the use of the supplies, and livestock and their products including milk. As used in this chapter, the term "supplies" includes seed, petroleum products, fertilizer, farm chemicals, insecticide, feed, hay, pasturage, veterinary services, or the furnishing of services in delivering or applying the supplies. The An agricultural supplier's lien filed in accordance with section 35-31-02 is effective from the date the supplies are furnished or the services performed. An agricultural supplier's lien filed as a security interest created by contract to secure money advanced or loaned for any purposes is not effective to secure a priority over liens filed under section 35-05-01.

SECTION 4. AMENDMENT. Section 35-31-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-31-02. Procedure to obtain lien. To obtain an agricultural supplier's lien, except an agricultural supplier's lien for furnishing petroleum products, the person entitled to the lien, within one hundred twenty days after the supplies are furnished or the services performed, shall file a verified statement in the office of the register of deeds of any county in this state or in the office of the secretary of state. To obtain an agricultural supplier's lien for furnishing and delivering petroleum products, the person entitled to the lien, within one hundred ~~eighty~~ fifty days after the petroleum products are furnished or delivered, shall file a verified statement in the office of the register of deeds of any county in the state or in the office of the secretary of state. The statement must contain the following information:

1. The name and address of the person to whom the supplies were furnished.
2. The name and address of the supplier.
3. A description of the crops, agricultural products, or livestock and their amount or number, if known, subject to the lien together with ~~the legal a~~ reasonable description, including the county as to the location of the crops, agricultural products, or livestock and the year the crop is to be harvested or was harvested.
4. A description and value of the supplies and the first date furnished.

5. The social security number or, in the case of a debtor doing business other than as an individual, the internal revenue service taxpayer identification number of the person to whom the supplies were furnished.

The secretary of state shall prescribe one form that can be used to obtain a lien under this section or gain protection under the central notice system, or both. Before a supplier's lien is filed, a billing statement for the supplies furnished must include notice to the agricultural producer that if the amount due to the agricultural supplier is not satisfied a lien may be filed.

Approved April 11, 1997
Filed April 11, 1997

CHAPTER 307

SENATE BILL NO. 2248

(Senators Krebsbach, Grindberg, W. Stenehjem)
(Representatives Axtman, Poolman)

SELF-SERVICE STORAGE FACILITY LIEN

AN ACT to create and enact a new chapter to title 35 of the North Dakota Century Code, relating to creation and enforcement of liens on property in self-service storage facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 35 of the North Dakota Century Code is created and enacted as follows:

Definitions. As used in this chapter, unless the context otherwise requires:

1. "Default" means failure of the occupant to pay the rent and other charges at the time and in the manner set forth in the rental agreement.
2. "Last known address" means the address provided by the occupant in the latest rental agreement or the address provided by the occupant in a subsequent written notice of a change of address.
3. "Occupant" means the person who rents storage space at a self-service storage facility under a rental agreement, or a sublessee, successor, or assignee.
4. "Owner" means any person who owns, leases, subleases, manages, or operates a self-service storage facility and receives rent from an occupant under a rental agreement.
5. "Personal property" means movable property not affixed to land including merchandise and household goods.
6. "Rental agreement" means a written agreement between the owner and the occupant which establishes or modifies the terms and conditions of the occupant's use of storage space at a self-service storage facility.
7. "Self-service storage facility" means any real property used for renting or leasing individual storage spaces in which occupants customarily store and remove their personal property. The term does not include a garage used principally for parking motor vehicles; any property of a financial institution which contains vaults, safe deposit boxes, or other receptacles for the purposes and benefits of the financial institution's customers; or a warehouse or a public warehouse where warehouse receipts, bills of lading, or other documents of title are issued for the personal property stored.
8. "Storage space" means an enclosure, cubicle, or room that is fully enclosed and equipped with a door designed to be locked for security by the occupant.

Lien against property. The owner of a self-service storage facility has a lien on all personal property stored under a rental agreement in a storage space at the self-service storage facility for rent, labor, and other charges, and for expenses reasonably incurred in the sale or other disposition of the property under law. This lien is superior to other security interests except those perfected before the date the lien attaches. The lien attaches upon default by the occupant as stated in the notice of default served on the occupant as provided in this Act.

Denial of access - Disposal of property. If the occupant is in default, the owner may deny the occupant access to the leased space and enforce the lien by selling the property stored in the leased space. Sale of the property may be by public or private proceeding and may also be as a unit or in parcels. After the proceeding, the owner may dispose of any property that was offered for sale but which remained unsold.

Custody and control of property. Unless the rental agreement provides otherwise, until a sale under this chapter, the occupant is responsible for the care, custody, and control of all property stored in the leased storage space, unless the owner secures the property elsewhere during the sale proceedings.

Notice of proceedings. Before conducting a sale, the owner shall:

1. Deliver in person or send by certified mail a notice of default to prior lienholders and to the occupant at the occupant's last known address. A notice under this section is presumed delivered if it is deposited with the United States postal service and properly addressed with postage prepaid. The notice must include:
 - a. A statement that the contents of the occupant's leased space are subject to the operator's lien and that the occupant is denied access to the property until the owner's claim is satisfied;
 - b. The address of the self-service storage facility, the number of the space where the personal property is located, and the name of the occupant;
 - c. A statement of the charges due, the date of default, and a demand for payment of the charges due within a specified time, not less than ten days after the date of notice;
 - d. A statement in bold type providing that, unless the claim is paid within the time stated, the contents of the occupant's leased space will be sold; and
 - e. The name, address, and telephone number of the owner or a designated agent whom the occupant may contact to respond to the notice.
2. Publish, once a week for two consecutive weeks, with the first publication not more than fifteen days before the sale and the last publication at least seven days before the sale, the time, place, and terms of the sale in a newspaper of general circulation in the county where the self-service storage facility is located.

Sale of property - Application of proceeds. At any time before the sale, the occupant may pay the amount necessary to satisfy the lien and redeem the

occupant's property. If a sale is held, the owner shall satisfy the lien from the proceeds of the sale and hold the balance, if any, for delivery on demand to the occupant or any other recorded lienholder for a period of two years from the date of sale. The owner may retain any balance unclaimed after the two-year period.

Protection of purchaser in good faith. A purchaser in good faith of any property sold under this chapter takes the property clear of any rights of persons against whom the lien was valid, subject to the rights of prior lienholders.

Liability of owner. If the owner complies with this chapter, the owner's liability to the occupant is limited to the application of the proceeds received from the sale of the property necessary to satisfy the lien. The owner's liability to other lienholders is limited to the proceeds received from the sale of any property covered by the other lien less the amount necessary to satisfy the owner's lien.

Validity of certain rental agreements. Any rental agreement entered before August 1, 1997, remains valid and may be enforced or terminated in accordance with its terms or as permitted by any other law of this state.

Sale proceedings - Titled vehicles. The sale proceedings in this Act are sufficient to provide the instruments or documents of authority necessary to obtain a transfer of title to vehicles under section 39-05-19.

Approved March 25, 1997
Filed March 26, 1997

LIVESTOCK

CHAPTER 308

HOUSE BILL NO. 1182

(Representatives DeKrey, Delmore, Fairfield, Hanson)

SKUNK AND RACCOON OWNERSHIP PROHIBITED

AN ACT to create and enact a new section to chapter 36-01 of the North Dakota Century Code, relating to the private ownership of primates, wolves, wolf hybrids, skunks, and raccoons; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 36-01 of the North Dakota Century Code is created and enacted as follows:

Ownership of skunks and raccoons prohibited - Exception - Rules - Penalty.
No person may keep a skunk or raccoon in captivity. This section does not apply to a zoo licensed by the regulatory enforcement and animal care program of the animal and plant health inspection service of the United States department of agriculture. The state veterinarian shall confiscate and dispose of any animal kept in violation of this section. The board shall adopt rules governing the keeping of a primate, wolf, or wolf hybrid in captivity and to implement this section. As used in this section, "primate" does not include a human being; "wolf" means any animal of the species *canis lupus*; and "wolf hybrid" means any animal that is any part wolf. A person who willfully violates this section is guilty of a class B misdemeanor.

Approved April 4, 1997
Filed April 4, 1997

CHAPTER 309

SENATE BILL NO. 2393

(Senators O'Connell, Solberg, Tomac)
(Representative Nicholas)

LIVESTOCK DEALER AND AUCTION LICENSING

AN ACT to create and enact sections 36-04-10.1 and 36-05-13.2 of the North Dakota Century Code, relating to violations of laws governing livestock dealers and livestock auction markets; to amend and reenact sections 36-04-02, 36-04-05.1, 36-04-10, 36-04-13, 36-05-02, 36-05-04.1, and 36-05-14 of the North Dakota Century Code, relating to the licensing of livestock dealers and livestock auction markets; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-04-02 of the North Dakota Century Code is amended and reenacted as follows:

36-04-02. Restrictions on application of provisions of chapter. The provisions of this chapter do not apply to:

1. Farmers who or farm associations which buy and sell livestock, poultry, or wool among themselves as producers.
2. Farmers who or farm associations which purchase livestock or wool to complete a load of their own livestock or wool for shipment to market if the amount so purchased does not exceed twenty-five percent of a ~~railroad earload~~ truckload.
3. Cooperative livestock or wool marketing associations of producers of livestock or wool in their dealings with their members.
4. Livestock purchased by local butchers for slaughter or processing in their business for local home consumption.

SECTION 2. AMENDMENT. Section 36-04-05.1 of the North Dakota Century Code is amended and reenacted as follows:

36-04-05.1. Records release required with application for licensure. A dealer shall file, together with the license application, a release authorizing the access of the commissioner to financial records of the dealer held by financial institutions, accountants, and other sources. The release must be in a form approved by the commissioner. The commissioner may use the release in the course of licensing or relicensing a dealer or in the course of an investigation of a dealer ~~when instituted due to a complaint against the dealer or when based upon evidence sufficient to establish probable cause of a violation of this chapter or the Packers and Stockyards Act, 1924 [Pub. L. 67-51; 42 Stat. 159; 7 U.S.C. 181 et seq.].~~ Any information gained through the use of a release is confidential. The commissioner may furnish information obtained through the use of the records release to the attorney general, other state agencies, and any prosecuting officials requiring the information for use in pursuit of official duties.

SECTION 3. AMENDMENT. Section 36-04-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-04-10. Refusal or revocation of license. The department shall refuse to grant a license, or shall revoke a license which it has granted, when it is satisfied that:

1. The applicant or licensee has violated any of the laws of this state governing the handling, shipment, or transportation of livestock or wool;
2. The applicant or licensee has been guilty of deceit, fraud, dishonesty, forgery, or theft as a dealer in livestock or wool, or in dealing therein;
3. The applicant made or caused to be made any false entry or statement of fact in any application, financial statement, or report filed with the department under this chapter;
4. The applicant has failed to keep and maintain suitable records, which disclose all purchases and sales of livestock, or has refused, during reasonable hours, to allow any authorized agent of the department to have access to inspect and to copy any and all of such records relating to the dealer's business;
5. The applicant has failed or refused to furnish the information required under this chapter and as prescribed by the department; ~~or~~
6. The applicant has failed to notify the commissioner of the receipt of a nonsufficient funds check as required by section 36-04-07.1-;
7. The applicant or licensee has failed to pay brand inspection fees or veterinarian fees as required by law;
8. The applicant or licensee has failed to collect beef promotion assessments pursuant to chapter 4-34; or
9. The applicant or licensee has failed to pay for livestock purchased. Such failure includes the issuance of a check as payment for livestock purchased, when such check is returned unpaid with a notation that the payment has been refused because of nonsufficient funds.

SECTION 4. Section 36-04-10.1 of the North Dakota Century Code is created and enacted as follows:

36-04-10.1. Unlawful acts. It is a violation of this chapter for any applicant or licensee to:

1. Violate any of the laws of this state governing the handling, shipment, or transportation of livestock or wool;
2. Make or cause to be made any false entry or statement of fact in any application, financial statement, or report filed with the department under this chapter;
3. Fail to keep and maintain suitable records that disclose all purchases and sales of livestock or refuse, during reasonable hours, to allow any

authorized agent of the department to have access to inspect and to copy any or all of such records relating to the dealer's business;

4. Fail or refuse to furnish the information required under this chapter as prescribed by the department;
5. Fail to notify the commissioner of the receipt of a nonsufficient funds check as required by section 36-04-07.1;
6. Fail to pay brand inspection fees or veterinarian fees as required by law;
7. Fail to collect beef promotion assessments pursuant to chapter 4-34; or
8. Fail to pay for livestock purchased. Such failure includes the issuance of a check or payment for livestock purchased, when such check is returned unpaid with a notation that the payment has been refused because of nonsufficient funds.

SECTION 5. AMENDMENT. Section 36-04-13 of the North Dakota Century Code is amended and reenacted as follows:

36-04-13. Application by department for appointment of trustee - Hearing - Appointment. Upon the insolvency of a dealer as defined in section 36-04-01, the department ~~shall~~ may apply to the district court of the county in which the dealer maintains its principal place of business for the appointment of itself as trustee. Upon such notice to the dealer as the court shall prescribe, but not exceeding ten days, or upon waiver of such notice in writing by the dealer, the court shall proceed to hear and determine such application in a summary manner. If it appears to the court that the dealer is insolvent within the meaning of this chapter and that it would be for the best interest of persons holding claims against the dealer for the purchase price of livestock or wool sold to such dealer or to his agent that the department shall execute such trust, the court shall issue an order appointing the department as a trustee, without bond, and the department shall proceed to perform its duties as such trustee in the manner set out in this chapter without further direction from the court.

SECTION 6. AMENDMENT. Section 36-05-02 of the North Dakota Century Code is amended and reenacted as follows:

36-05-02. Premises excluded from application of chapter. The provisions of this chapter do not apply to:

1. Any place used solely for the dispersal sale of the livestock of a farmer, dairyman, livestock breeder, or feeder who is discontinuing ~~his~~ the person's business.
2. The premises of any butcher, packer, or processor who receives animals exclusively for immediate slaughter.
3. Any place where any individual or any duly constituted association of breeders of livestock of any class assembles and offers for sale and sells under ~~his or its~~ the individual's or association's management registered livestock or breeding sires owned by the individual or members of the association if such individual or association assumes all responsibility of the sale, guarantees title of such livestock, and makes proper provision for the inspection of all animals sold.

4. Any place where a duly constituted association of breeders of livestock of any class assembles and offers for sale and sells under its management, at an annual production sale, which sale may not exceed twenty-one calendar days, livestock raised or held for at least one year by producers affiliated with such association, provided such association assumes all responsibility of the sale, guarantees title of such livestock, and makes proper provision for the inspection of all animals sold.

SECTION 7. AMENDMENT. Section 36-05-04.1 of the North Dakota Century Code is amended and reenacted as follows:

36-05-04.1. Records release required with application for licensure. A livestock auction market shall file, together with the license application, a release authorizing the access of the commissioner to financial records of the livestock auction market held by financial institutions, accountants, and other sources. The release must be in a form approved by the commissioner. The commissioner may use the release in the course of licensing or relicensing a livestock auction market or in the course of an investigation of a livestock auction market ~~when instituted due to a complaint against the market or when based upon evidence sufficient to establish probable cause of a violation of this chapter or the Packers and Stockyards Act, 1921 [Pub. L. 67-54; 42 Stat. 159; 7 U.S.C. 181 et seq.].~~ Any information gained through the use of a release is confidential. The commissioner may furnish information obtained through the use of the records release to the attorney general, other state agencies, and any prosecuting officials requiring the information for use in pursuit of official duties.

SECTION 8. Section 36-05-13.2 of the North Dakota Century Code is created and enacted as follows:

36-05-13.2. Unlawful acts. It is a violation of this chapter for any auction market or person to:

1. Make or cause to be made any false entry or statement of fact in any application, financial statement, or report filed with the department under this chapter;
2. Fail to keep and maintain suitable records that disclose all purchases and sales of livestock or refuse, during reasonable hours, to allow any authorized agent of the department to have access to inspect and to copy any or all of such records relating to the dealer's business;
3. Fail or refuse to furnish the information required under this chapter as prescribed by the department;
4. Fail to notify the commissioner of the receipt of a nonsufficient funds check as required by section 36-04-07.1;
5. Fail to pay brand inspection fees or veterinarian fees as required by law;
6. Fail to collect beef promotion assessments pursuant to chapter 4-34; or
7. Fail to pay for livestock purchased. Such failure includes the issuance of a check or payment for livestock purchased, when such check is returned unpaid with a notation that the payment has been refused because of nonsufficient funds.

SECTION 9. AMENDMENT. Section 36-05-14 of the North Dakota Century Code is amended and reenacted as follows:

36-05-14. ~~Penalty for violation of provisions of chapter~~ Penalties - Criminal - Civil. Any person who violates any of the provisions of this chapter is guilty of a class ~~B~~ misdemeanor.

1. Any auction market or person who violates any of the provisions of this chapter is guilty of a class A misdemeanor.
2. Any auction market or person who violates any of the provisions of this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be adjudicated by the courts or by the commissioner through an administrative hearing under chapter 28-32.

Approved March 20, 1997
Filed March 20, 1997

CHAPTER 310

HOUSE BILL NO. 1121

(Agriculture Committee)

(At the request of the State Board of Animal Health)

DISEASED ANIMAL DESTRUCTION

AN ACT to amend and reenact section 36-15-02 of the North Dakota Century Code, relating to the destruction of diseased animals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-15-02 of the North Dakota Century Code is amended and reenacted as follows:

36-15-02. Notice of condemnation of diseased animal - Animal to be destroyed within fifteen days - Extension of time. Whenever any animal has been adjudged by the board to be infected with bovine tuberculosis ~~or paratuberculosis, such, the~~ board or its authorized agent shall serve a written notice of its decision upon the owner or keeper of the animal before the condemned animal is killed. ~~Such~~ The animal must be destroyed within fifteen days after notice of condemnation, in either a federal or state inspected slaughtering plant, or under the supervision of an agent of the board. The fifteen-day period may be extended by the state veterinarian if ~~he~~ that person deems it advisable due to the circumstances involved in each case, and ~~such the~~ extension must be in writing. ~~Such~~ The notice must advise the owner or keeper of ~~his~~ that person's right to protest against the diagnosis and determination of the board within twenty-four hours after the service of the notice upon ~~him~~ that person. If no protest is made within such time by the owner or keeper of the condemned animal, it must be appraised in the manner provided in this chapter.

Approved March 6, 1997

Filed March 6, 1997

CHAPTER 311

HOUSE BILL NO. 1282

(Representatives Boehm, Renner)
(Senator Tomac)

RAFFLE OF LIVE CATTLE

AN ACT to amend and reenact section 36-21.1-09 of the North Dakota Century Code, relating to the use of live beef and dairy cattle as a raffle prize; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-21.1-09 of the North Dakota Century Code is amended and reenacted as follows:

36-21.1-09. Use of certain birds as advertising devices - Use of live beef or dairy cattle as raffle prizes - Gifts of animals.

1. No person may sell, offer for sale, raffle, offer, or give as a prize, premium, or use as an advertising device, chicks, ducklings, or goslings younger than four weeks of age in quantities of less than twelve birds to an individual person. Persons engaging in the business of selling chicks, ducklings, or goslings for agricultural or wildlife purposes are exempt from the provisions of this section, but only when selling for such purposes.
2. An eligible organization authorized to conduct games of chance under chapter 53-06.1 may raffle live beef or dairy cattle if each raffle ticket contains a statement that the winner of the beef or dairy cattle prize may convert that prize to a cash prize. The donor of the beef or dairy cattle prize shall determine the amount of the cash prize, which must be equivalent to the value of the beef or dairy cattle prize and cannot exceed the limitations of section 53-06.1-10.1.
3. A person may not give away any live animal, other than those authorized under ~~subsection~~ subsections 1 and 2, as:
 - a. A prize for, or as an inducement to enter any contest, game, or other competition;
 - b. An inducement to enter a place of amusement; or
 - c. An incentive to enter into any business agreement where the offer was for the purpose of attracting trade.
- ~~3.~~ 4. The provisions of subsection ~~2~~ 3 do not apply to a person or organization that gives away an animal:
 - a. As a project for the promotion of the equine and livestock industry of North Dakota;

- b. As a project for the promotion of conservation of animals and wildlife in North Dakota; or
- c. Which is intended for slaughter.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on April 1, 1997.

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

Approved March 13, 1997

Filed March 13, 1997

MILITARY

CHAPTER 312

HOUSE BILL NO. 1314

(Representatives Martinson, Nicholas, Hausauer)

(Senators Lips, Nething, Redlin)

MAJOR GENERAL C. EMERSON MURRY TRAINING CENTER

AN ACT to designate the training facility located at Camp Grafton (South) as the Major General C. Emerson Murry regional live fire and maneuver training center.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. DECLARATION OF PURPOSE. The legislative assembly finds it is in the public interest to recognize citizens of North Dakota whose achievements and contributions are of material and lasting significance to this state. Major General C. Emerson Murry is such a person. He enlisted in the army in 1942, saw combat in the 17th and 82nd airborne divisions for which he received numerous United States and foreign awards including the distinguished service medal, legion of merit, presidential unit citation, and bronze star with "V" device, served in the North Dakota national guard from 1955 to 1984, and served as adjutant general from 1975 to 1984. During his tenure as adjutant general, North Dakota ranked first in the nation in percentage of assigned strength, the North Dakota national guard was recognized as the strongest national guard in the nation, and the guard implemented a tuition assistance program that has assisted hundreds of young people in achieving college educations. Major General Murry had many other accomplishments in his professional career, including service as director of the legislative council from 1951 to 1975, during which time he served as chairman of the national legislative conference. He also served as manager of the Garrison diversion conservancy district from 1985 to 1993.

SECTION 2. TRAINING FACILITY DESIGNATED. The training facility located at Camp Grafton (South) is to remain a part of the overall Camp Grafton training complex but is designated as the Major General C. Emerson Murry regional live fire and maneuver training center.

Approved April 1, 1997

Filed April 2, 1997

CHAPTER 313**SENATE BILL NO. 2081**

(Government and Veterans Affairs Committee)
(At the request of the Adjutant General)

NATIONAL GUARD TUITION REIMBURSEMENT

AN ACT to amend and reenact section 37-07.1-06.2 of the North Dakota Century Code, relating to tuition reimbursement for members of the national guard.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-07.1-06.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

37-07.1-06.2. Tuition reimbursement - Payments. The adjutant general shall make tuition reimbursement payments, within the limits of legislative appropriations, ~~to any state-controlled school~~ for each qualifying member of the national guard enrolled in ~~that~~ any state-controlled school who receives a tuition waiver provided in section 37-07.1-03.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 314

HOUSE BILL NO. 1117

(Government and Veterans Affairs Committee)

(At the request of the Administrative Committee on Veterans' Affairs)

VETERANS' HOME OPERATING FUND

AN ACT to amend and reenact subsection 3 of section 37-15-14.1 of the North Dakota Century Code, relating to the fund for deposit of membership contributions to the veterans' home; and to provide for a transfer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 37-15-14.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. All moneys received as a result of charging the membership contribution authorized by subsection 1 must be deposited in a ~~special~~ veterans' home operating fund in the state treasury to be known as the "veterans' home improvement fund". The fund must be invested by the state investment board in the manner provided in chapter 21-10, and all income received, less amounts deducted pursuant to section 21-10-06.2, must be deposited in, or reinvested for the benefit of, the veterans' home improvement fund. Moneys in the veterans' home improvement fund must, subject to and following legislative appropriations, be expended only for expansion of present facilities of the home, for development of new facilities, for enrichment of living conditions, or for additional care for members of the home, as such expansion, development, enrichment, or additional care is deemed necessary by the administrative committee. ~~The office of management and budget shall prepare the warrant checks.~~

SECTION 2. TRANSFER. The state treasurer shall transfer the unobligated balance of the veterans' home improvement fund on the effective date of this Act to the veterans' home operating fund.

Approved March 26, 1997

Filed March 27, 1997

CHAPTER 315

SENATE BILL NO. 2049

(Legislative Council)
(North Dakota/South Dakota Commission)

INTERSTATE MUTUAL AID COMPACT

AN ACT to create and enact section 37-17.1-14.5 of the North Dakota Century Code, relating to the interstate mutual aid agreement or compact; to amend and reenact sections 37-17.1-04, 37-17.1-14.2, and 37-17.1-14.3 of the North Dakota Century Code, relating to interstate mutual aid agreements; to repeal section 37-17.1-14.4 of the North Dakota Century Code, relating to the mutual aid agreement or compact; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-17.1-04 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-04. Definitions. As used in this chapter:

1. "Disaster" means the occurrence of widespread or severe damage, injury, or loss of life or property resulting from any natural or manmade cause including: fire, flood, earthquake, severe high and low temperatures, tornado storm, wave action, oil spill, or other water or air contamination, epidemic, blight, drought, infestation, explosion, riot, or hostile military or paramilitary action, which is determined by the governor to require state or state and federal assistance or actions to supplement the recovery efforts of local governments in alleviating the damage, loss, hardship, or suffering caused thereby.
2. "Disaster or emergency worker" means any person performing disaster or emergency responsibilities or duties at any place in this state subject to the order or control of, or pursuant to a request of, the state government or any political subdivision ~~thereof~~.
3. "Emergency" means any situation ~~which~~ that is determined by the governor to require state or state and federal response or mitigation actions to immediately supplement local governments to protect lives and property, to provide for public health and safety, or to avert or lessen the threat of a disaster.
4. "Emergency management" means a comprehensive integrated system at all levels of government and in the private sector which provides for the development and maintenance of an effective capability to mitigate, prepare for, respond to and recover from, known and unforeseen hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or our environment.
5. "Mass care" means food, clothing, shelter, and other necessary and essential assistance provided to a large number of affected people in response to, or recovery from, a disaster or emergency.

SECTION 2. AMENDMENT. Section 37-17.1-14.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

37-17.1-14.2. Interstate mutual aid agreements.

1. This state may enter into an interstate mutual aid agreement or compact with any state that has enacted or shall enact the compact substantially in the form contained in section ~~37-17.1-14.4~~ 37-17.1-14.5.
2. The governor may enter into an interstate agreement with any state if the governor finds that joint action with that state is desirable in meeting common intergovernmental problems of emergency or disaster preparedness, mitigation, response, and recovery.
3. The governor may deny the request of a requesting state as the governor determines necessary.
4. All interstate mutual aid compacts and other interstate agreements to which this state is a party dealing with disaster or emergency preparedness, response, recovery, or mitigation must be reviewed and made current every four years.
5. If a person holds a license, certificate, or other permit issued by any state or political subdivision evidencing the meeting of qualifications for professional, mechanical, or other skills, the person may render aid involving that skill in this state to meet an emergency or disaster, and this state shall give due recognition to the license, certificate, or other permit.
6. When considered of mutual benefit, the governor may, subject to the limitations of law, enter into intergovernmental arrangements with neighboring provinces of Canada for the purpose of exchanging disaster or emergency resources.

SECTION 3. AMENDMENT. Section 37-17.1-14.3 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

37-17.1-14.3. Authority to join interstate mutual aid agreements - Interstate compacts.

1. The governor, in the name of the state, may join with other states in the interstate mutual aid agreement or compact.
2. The governor may negotiate and execute such supplemental agreements as may be necessary and proper to fully carry out the terms and provisions of the interstate mutual aid agreement or compact as set forth in section ~~37-17.1-14.4~~ 37-17.1-14.5.

SECTION 4. Section 37-17.1-14.5 of the North Dakota Century Code is created and enacted as follows:

37-17.1-14.5. Text of the mutual aid agreement or compact. The interstate mutual aid agreement or compact referred to in sections 37-17.1-14.2 and 37-17.1-14.3 reads as follows:

INTERSTATE MUTUAL AID AGREEMENT OR COMPACTArticle I - Purpose and Authorities

This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purposes of this agreement, the term "states" is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all United States territorial possessions.

The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the governor of the affected state, whether arising from natural disaster, technological hazard, manmade disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' national guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

Article II - General Implementation

Each party state entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

On behalf of the governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

Article III - Party State Responsibilities

1. It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:
 - a. Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the

- party states might jointly suffer, whether due to natural disaster, technological hazard, manmade disaster, emergency aspects of resource shortages, civil disorders, insurgency, or enemy attack.
- b. Review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency.
 - c. Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.
 - d. Assist in warning communities adjacent to or crossing the state boundaries.
 - e. Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material.
 - f. Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.
 - g. Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.
2. The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within thirty days of the verbal request. Requests shall provide the following information:
- a. A description of the emergency service function for which assistance is needed, such as, but not limited to, fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.
 - b. The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed.
 - c. The specific place and time for staging of the assisting party's response and a point of contact at that location.
3. There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States government, with free exchange of information, plans, and resource records relating to emergency capabilities.

Article IV - Limitations

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state.

Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect, or loaned resources remain in the receiving state, whichever is longer.

Article V - Licenses and Permits

Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

Article VI - Liability

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

Article VII - Supplementary Agreements

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

Article VIII - Compensation

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

Article IX - Reimbursement

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expenses incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; provided that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this provision.

Article X - Evacuation

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

Article XI - Implementation

1. This compact shall become operative immediately upon its enactment into law by any two states; thereafter, this compact shall become effective as to any other state upon its enactment by such state.
2. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until thirty days after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

3. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the federal emergency management agency and other appropriate agencies of the United States government.

Article XII - Validity

This Act shall be construed to effectuate the purposes stated in Article I hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this Act and the applicability thereof to other persons and circumstances shall not be affected thereby.

Article XIII - Additional Provisions

Nothing in this compact shall authorize or permit the use of military force by the national guard of a state at any place outside that state in any emergency for which the president is authorized by law to call into federal service the militia, or for any purpose for which the use of the army or the air force would in the absence of express statutory authorization be prohibited under section 1385 of title 18, United States Code.

SECTION 5. REPEAL. Section 37-17.1-14.4 of the 1995 Supplement to the North Dakota Century Code is repealed.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 7, 1997
Filed March 10, 1997

CHAPTER 316

HOUSE BILL NO. 1118

(Government and Veterans Affairs Committee)
(At the request of the Office of Administrative Hearings)

COMMISSIONER OF VETERANS' AFFAIRS ADMINISTRATIVE HEARINGS

AN ACT to amend and reenact subsection 3 of section 37-19.1-04 of the North Dakota Century Code, relating to requests for administrative hearings from the commissioner of veterans' affairs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 37-19.1-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Within fifteen days after receiving a request from an applicant or person under subsection 1 or 2, the commissioner of veterans' affairs ~~shall~~ may request the director of the office of administrative hearings to designate a hearing officer to hear the grievance arising under subsection 1 or 2. The commissioner shall notify the employer or employing agency that a request for a hearing has been made. The office of administrative hearings is entitled to be reimbursed by the employer or employing agency for all hearing officer services rendered and expenses incurred in performing these duties. The hearing officer shall hold the hearing within thirty days after the hearing officer request is received by the director of the office of administrative hearings. Notwithstanding the time limitation, the hearing officer may postpone or continue the hearing for good cause, at the request of a party. At the hearing, both parties may be represented by counsel. If the hearing is requested pursuant to subsection 1, the employing agency has the burden of proving that the veteran or the qualified veteran's spouse did not possess the qualifications required for the position. If the hearing is requested pursuant to subsection 2, the employing agency has the burden of proving that any action which was taken was not taken because of exercise of the right to an employment preference. The hearing officer shall issue findings of fact, conclusions of law, and an order within fifteen days after the hearing is concluded, briefs filed, and arguments closed. The order is binding on both parties, subject to appeal.

Approved March 10, 1997
Filed March 10, 1997

MINING AND GAS AND OIL PRODUCTION

CHAPTER 317

HOUSE BILL NO. 1194 (Representatives Skarphol, Byerly)

OIL AND GAS PRODUCTION REPORT REQUIREMENTS

AN ACT to amend and reenact subdivision i of subsection 1 of section 38-08-04 of the North Dakota Century Code, relating to oil and gas production reports.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ **SECTION 1. AMENDMENT.** Subdivision i of subsection 1 of section 38-08-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- i. ~~That every~~ Every person who produces, sells, purchases, acquires, stores, transports, refines, disposes of, or processes oil, gas, saltwater, or other related oilfield fluids in this state ~~must~~ to keep and maintain within this state complete and accurate records of the quantities thereof, which records ~~shall~~ must be available for examination by the commission or its agents at all reasonable times, and ~~that every such person~~ to file with the commission ~~such~~ reports as ~~it~~ the commission may prescribe with respect to ~~such~~ oil or gas or the products thereof. An oil and gas production report need not be notarized but must be signed by the person submitting the report.

Approved March 26, 1997
Filed March 27, 1997

¹ Section 38-08-04 was also amended by section 28 of Senate Bill No. 2046, chapter 51.

CHAPTER 318**SENATE BILL NO. 2107**

(Natural Resources Committee)

(At the request of the Industrial Commission)

**INDUSTRIAL COMMISSION NATURAL GAS
RESPONSIBILITIES REPEALED**

AN ACT to repeal section 38-08-06.1 of the North Dakota Century Code, relating to the industrial commission's responsibilities pursuant to the Natural Gas Policy Act of 1978.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 38-08-06.1 of the North Dakota Century Code is repealed.

Approved March 11, 1997

Filed March 13, 1997

CHAPTER 319

HOUSE BILL NO. 1342

(Representatives Wald, Brown, Drovdal, Wardner)
(Senators Christmann, Urlacher)

GEOPHYSICAL EXPLORATION REGULATION

AN ACT to create and enact a new subsection to section 38-08.1-01, a new subsection to section 38-08.1-04.1, and a new section to chapter 38-08.1 of the North Dakota Century Code, relating to definitions for purposes of geophysical exploration, notification requirements for geophysical exploration permitholders, and authority of the industrial commission to adopt rules governing geophysical exploration; to amend and reenact sections 38-08.1-02, 38-08.1-03.1, 38-08.1-04, subsections 1, 3, and 5 of section 38-08.1-04.1, sections 38-08.1-04.2, 38-08.1-05, subsections 2, 3, and 5 of section 38-08.1-06, sections 38-08.1-06.1, and 57-62-03.1 of the North Dakota Century Code, relating to geophysical exploration requirements and enforcement funding; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 38-08.1-01 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

"Commission" means the industrial commission.

SECTION 2. AMENDMENT. Section 38-08.1-02 of the North Dakota Century Code is amended and reenacted as follows:

38-08.1-02. Enforcement by commission - Persons required to comply with chapter. Notwithstanding any other provision of this chapter, the commission is the primary enforcement agency governing geophysical exploration in this state. Any person in this state engaged in geophysical exploration or engaged as a subcontractor of a person engaged in geophysical exploration shall comply with ~~the following provisions~~ of this chapter; provided, however, that compliance with ~~the provisions~~ of this chapter by a crew or its employer constitutes compliance herewith by that person who has engaged the service of ~~such~~ the crew, or its employer, as an independent contractor.

SECTION 3. AMENDMENT. Section 38-08.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

38-08.1-03.1. Surety bond - Certificate - Release.

1. A ~~person~~ geophysical exploration contractor desiring to engage in geophysical exploration in this state shall ~~also~~ file with the industrial commission a good and sufficient surety bond in the amount of ~~fifteen thousand dollars for a single geophysical crew or a blanket surety bond in the amount of thirty fifty thousand dollars for all geophysical crews operating within the state for such person~~ if the contractor intends to conduct shot hole operations or in the amount of twenty-five thousand dollars if the contractor intends to use any other method of geophysical exploration. Each subcontractor engaged by the geophysical exploration

contractor for the drilling or plugging of seismic shot holes must file with the commission a good and sufficient surety bond in the amount of ten thousand dollars. The bond must be in a form prescribed by the industrial commission and must indemnify all owners of property within the state, including the state and its political subdivisions, against physical damages to property which may result from geophysical exploration and the plugging of drill holes. The bond must cover all geophysical exploration and plugging operations conducted within one year of the date the bond is issued and must be automatically renewed unless the industrial commission and the person covered thereby by the bond receive notice sixty days prior to before any anniversary date of the surety's intent not to renew the bond. In the event If the surety does not renew the geophysical exploration contractor's bond, the surety's liability under the bond ceases six years from the date that geophysical exploration or reclamation covered by the bond was last conducted in the state. If the surety does not renew the drilling or plugging bond, the surety's liability under the bond ceases two years from the date the drilling and plugging covered by the bond was last conducted in this state. A person required to post a bond under this subsection may post cash or a certificate of deposit in lieu of the bond under rules adopted by the commission.

2. ~~The bond must remain on file with the industrial commission so long as the exploration covered by the bond is carried on or engaged in within the state, plus an additional six years thereafter; provided, however, that the aggregate liability of the surety on the bond may in no event exceed the amount of the bond.~~
3. ~~A bond filed pursuant to this section is the sole bond required of persons engaging in geophysical exploration within the state of North Dakota and supersedes any bonds which may be required by the individual counties. Upon compliance with the provisions of sections 38-08.1-01 through 38-08.1-05, any bond which may previously have been filed in any county shall be released; provided, however, that the surety of any such bond remains liable under its contract for all actions of its principal prior to the date of compliance with this section.~~
4. ~~Upon filing the bond required by this section and presenting a certificate of authority to transact business in this state issued pursuant to chapter 10-22, a certificate of incorporation issued pursuant to chapter 10-19.1, or some other certificate issued by the secretary of state showing the name of the person designated as resident agent for service of process, the industrial commission shall issue to the person desiring to engage in geophysical exploration or plugging operations or any subcontractor of that person a certificate showing that the bond has been filed and showing the name and address of the surety company and the name of the person designated resident agent for service of process.~~
4. The proceeds of a surety bond become the property of the commission or the cash or certificate of deposit posted in lieu of a surety bond may not be returned to that person if the principal or person posting the bond, cash, or certificate of deposit fails to comply with this chapter and rules adopted by the commission under this chapter. This must be determined by the commission after notice and hearing in accordance with rules adopted by the commission. Notice of the hearing must be given to the principal and surety on the bond or to the person posting

the cash or certificate of deposit by mailing a copy of the notice of hearing and a copy of a complaint, stating the grounds for forfeiture to them, filed by the commission. This must be done by certified mail, return receipt requested, and addressed to their last known address listed with the commission. If the principal or surety or person posting the cash or certificate of deposit has a defense to, or otherwise wishes to contest the complaint of the commission, that person must file a written statement or answer setting forth the defense with the commission at least three business days before the commission hearing. Any defense or reason for contesting the complaint is waived if that person fails to do so. The commission may treat the failure to file a defense or reason to contest the complaint or the failure to appear at the hearing as default by the party. If the commission determines the principal on the bond or the person posting the cash or certificate of deposit as security has complied with this chapter and rules adopted by the commission under this chapter, including the proper plugging of wells and seismic holes and reclamation of the surrounding affected area, with respect to all operations secured by the bond, the commission shall release the obligation of the bond or return the cash or certificate of deposit upon its next anniversary date.

SECTION 4. AMENDMENT. Section 38-08.1-04 of the North Dakota Century Code is amended and reenacted as follows:

38-08.1-04. Application for permit to engage in geophysical exploration. Any person desiring to engage in geophysical exploration ~~within this state shall prior to before~~ actually engaging in ~~such~~ the exploration, shall file an application for a permit to engage in geophysical exploration with the ~~board of county commissioners in each county in which exploration is to be carried on~~ commission. The application for a permit for geophysical exploration must include the following information:

1. The name, address, and telephone number of the person intending to engage in geophysical exploration or plugging operations and the name and telephone number of any local representative who may be contacted by the ~~board of county commissioners~~ commission concerning geophysical exploration activities.
2. The name, address, and telephone number of any subcontractors, including drilling and plugging subcontractors, to be employed by the person intending to conduct geophysical exploration or plugging operations.
3. The name and address of the resident agent for service of process of the person intending to engage in geophysical exploration.
4. The date upon which geophysical exploration is to begin.
5. The approximate number and depth of any drill holes and the specific location of any drill holes or a description of the property on which the geophysical exploration is to be conducted described by township, range, section, and quarter section.
6. ~~A certificate from the industrial commission indicating that the person intending to engage in geophysical exploration and any subcontractors to~~

be employed by that person have each filed with the industrial commission a good and sufficient surety bond.

7. A fee to be determined by the board of county commissioners based on the anticipated actual expenses of administering and enforcing this chapter of up to one hundred dollars.

Applications filed with the board of county commissioners under this section must be maintained in a manner separate and apart from any other records or indices concerning the land described in the application. The person making application for a geophysical exploration permit shall file an amended application whenever there is any new information or a change in the information contained in the application on file with the board of county commissioners commission.

SECTION 5. AMENDMENT. Subsections 1, 3, and 5 of section 38-08.1-04.1 of the North Dakota Century Code are amended and reenacted as follows:

1. Upon filing a complete application for permit to explore pursuant to section 38-08.1-04, the board of county commissioners or its designee commission may issue to any person desiring to engage in geophysical exploration a "geophysical exploration permit" subject to such other conditions or restrictions as may be provided by county ordinances established pursuant to chapter 11-33. A person may not engage in geophysical exploration activities in any county this state without having first obtained a geophysical exploration permit from the board of county commissioners commission.
3. The permit must be signed by the chairman director of the board of county commissioners commission's oil and gas division or that person's the director's designee and must bear the official county seal. The permit is valid and effective for all geophysical crews of the permittee for a one-year period in which it is issued one year.
5. The permit or a photostatic copy thereof must be carried at all times by a member of the crew during the period of geophysical exploration and must be exhibited upon demand of the landowner or tenant operator or county or state official or respective surface owner.

SECTION 6. A new subsection to section 38-08.1-04.1 of the North Dakota Century Code is created and enacted as follows:

The permitholder shall notify the county auditor or the auditor's designee at least twenty-four hours, excluding Saturdays and holidays, before the permitholder commences geophysical exploration in the county. Notice must include the approximate time schedule and location of the planned activity.

SECTION 7. AMENDMENT. Section 38-08.1-04.2 of the North Dakota Century Code is amended and reenacted as follows:

38-08.1-04.2. County commission to notify industrial commission Notification of issuance of permit - Revocation - Suspension. The county commission of any county in which a permit is issued shall immediately forward notice of the issuance of a permit to the industrial commission board of county commissioners of the county in which the lands are located. The county commission may revoke the

permit of any person engaging in geophysical exploration upon a showing that that person has violated ~~county ordinances or any other~~ applicable requirement pertaining to geophysical exploration. The ~~county~~ commission shall notify that person, by the most effective written means, of the permit revocation. Upon notification, the person engaging in geophysical exploration may, within fifteen days, request a hearing before the ~~board of county commissioners, at its next regular or special meeting,~~ commission on the matter. The ~~board of county commissioners~~ commission shall either affirm, modify, or deny the permit revocation. The ~~board of county commissioners~~ commission may also suspend the permit temporarily in those cases where climate and physical conditions are such as to cause harm ~~or, damage,~~ or undue stress to roads, bridges, pastures, crops, or ~~similar factors that could cause undue stress to the normal physical well-being within the county.~~ However, the permit suspension time period may not be included in the one-year permit period other physical features. For these same reasons, a board of county commissioners, upon notice to the permitholder and the commission, also may suspend, for not longer than forty-eight hours, a permit for operations within the county.

SECTION 8. AMENDMENT. Section 38-08.1-05 of the North Dakota Century Code is amended and reenacted as follows:

38-08.1-05. Duty to file record showing where work performed - Request to file location of worksite- Complaint of property owner. Within thirty days following any calendar month in which geophysical exploration is begun by any person within this state, such person shall file with the ~~county~~ commission ~~in each county in which work is begun,~~ and shall send to the owner or occupier of any land upon which work is begun, a record showing the township, range, section, and quarter section in the county in which such work was performed and the date upon which such work was commenced. ~~Upon written request by the owner or occupier of the land upon which the work has occurred, any person who has performed work within the state shall send to such landowner or occupier a record showing the date and a legal description of the worksite sufficiently exact to permit location and identification of the site.~~ This ~~The~~ notice also must include the actual shot point location and the amount of explosive charge, if any, in each drill hole. ~~The request must be based upon a written complaint of the property owner or occupier that physical damage to such property has occurred or is reasonably believed to have occurred by reason of the work. The written complaint must designate the name and address of the complaining person and shall state the approximate date of the alleged damage. The required record of operations in response to the written demand therefor must be supplied within ten days from the date on which such written demand is received.~~

SECTION 9. AMENDMENT. Subsections 2, 3, and 5 of section 38-08.1-06 of the North Dakota Century Code are amended and reenacted as follows:

2. The seismic company responsible for the plugging and abandonment of seismic shot holes shall notify the ~~board of county commissioners~~ commission in writing that it intends to plug and abandon the drill hole. The required notice must be received by the ~~board~~ commission at least twenty-four hours ~~prior to~~ before the time plugging activities are scheduled to begin. The notice must include the date and time the activities are expected to commence, the location by section, township, and range of the holes to be plugged, and the name and telephone number of the person in charge of the plugging operations. A copy of the notice must be sent to the landowner or lessee at the same time it is sent to the ~~board of county commissioners~~ commission. The seismic company shall notify the ~~board of county commissioners~~ commission in

writing upon completion of the plugging operation. ~~Any person violating this subsection is guilty of an infraction.~~

3. All seismic shot holes must be plugged as soon after being used as reasonably is practicable; however, they may not remain unplugged for a period of more than thirty days unless, upon application, the ~~board of county commissioners~~ commission grants an extension which may not exceed ninety days. All seismic shot holes must be temporarily capped during the period between drilling and final plugging.
5. The surface around each seismic shot hole must be restored to its original condition insofar as restoration is practicable and all stakes, markers, cables, ropes, wires, primacord, cement or mud stacks, and any other debris or material not native to the area must be removed from the drill site and ~~deposited in a sanitary landfill~~ lawfully disposed of.

SECTION 10. AMENDMENT. Section 38-08.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

38-08.1-06.1. Plugging requirements - Rules - Liability for damage.

4. ~~Except as provided in this section,~~ All seismic holes must be: plugged in accordance with rules adopted by the commission. The commission shall review and revise its rules governing plugging requirements as technology in the field evolves.
 - a. ~~Filled with a bentonite-water slurry by hose injection and displacement upwards from the bottom up. The slurry mixture must have a marsh funnel viscosity of sixty seconds or greater per quart [0.95 liter] (subject to field verification on site), and must contain a minimum of twenty-eight pounds [12.70 kilograms] of commercial plugging bentonite per forty-two gallons [158.99 liters] of water. The remainder of the hole must be filled with nonmetallic perma-plug, imprinted or tagged with the name and permit number of the person conducting the geophysical exploration, must be set four feet [1.22 meters] below the surface and, above the perma-plug, native surface material must be used to fill the seismic hole to the surface; or~~
 - b. ~~Preplugged using coarse-ground, sodium bentonite chunks of sizes not less than three-eighths of an inch [9.53 millimeters] nor greater than seven-eighths of an inch [22.23 millimeters] in diameter, which have not been chemically treated. Sodium bentonite chunks in packages that have moisture contents lower than fifteen percent or higher than nineteen percent, or with greater than fifteen percent inert solids may not be used. Under this subdivision, a seismic hole must be preplugged with a minimum of one hundred pounds [45.36 kilograms] of sodium bentonite for each fifty feet [15.24 meters] of hole depth, placed above the explosive charge, with the remainder of the hole plugged with drill cuttings to within four feet [1.22 meters] of the surface. Backfill shot holes must be filled with sodium bentonite to four feet [1.22 meters] below the surface and with a filling of native material to the surface.~~

2. Seismic holes that penetrate artesian water deposits must be stabilized with a cement slurry from the maximum depth attainable up to approximately four feet [1.22 meters] below the ground surface or with sodium bentonite chunks pursuant to subdivision b of subsection 4 of this section, and stabilization must occur within a reasonable length of time. The cement slurry or sodium bentonite chunks must be of sufficient density to contain water to their native strata. The remainder of the hole must be filled with native surface material.
3. Seismic holes that penetrate artesian water deposits and encounter alkaline or saline waters must be plugged immediately as set forth in subsection 4 except that a heavier slurry mixture must be used with the addition of inorganic drying or stabilizing chemicals such as calcium chloride, sodium bicarbonate, or soda ash to assist in the effective plugging and stability of the bentonite column in the hole.
4. The seismic company is liable for all damages resulting from failure to comply with rules adopted by the commission pursuant to this section.

SECTION 11. A new section to chapter 38-08.1 of the North Dakota Century Code is created and enacted as follows:

Commission to adopt rules. The commission may adopt and enforce rules to implement this chapter.

SECTION 12. AMENDMENT. Section 57-62-03.1 of the North Dakota Century Code is amended and reenacted as follows:

57-62-03.1. Oil and gas impact grant fund - Continuing appropriation. The moneys accumulated in the oil and gas impact grant fund must be allocated as provided by law and as appropriated by the legislative assembly for distribution through grants by the energy development impact office to oil and gas development impacted cities, counties, school districts, and other taxing districts or for industrial commission enforcement of laws and rules relating to geophysical exploration in this state. The amounts deposited in the oil and gas impact grant fund under subsection 1 of section 57-51-15 are hereby appropriated as a standing and continuing appropriation to the energy development impact office for grants as provided in this section.

SECTION 13. APPROPRIATION. There is hereby appropriated out of any moneys in the lands and minerals trust fund, not otherwise appropriated, the sum of \$125,000, or so much of the sum as may be necessary, and from the oil and gas impact grant fund, not otherwise appropriated, the sum of \$125,480, or so much of the sum as may be necessary, to the oil and gas division of the industrial commission, for the purpose of enforcement of laws and rules relating to geophysical exploration in the state, for the biennium beginning July 1, 1997, and ending June 30, 1999.

Approved April 8, 1997
Filed April 8, 1997

CHAPTER 320**HOUSE BILL NO. 1132**

(Natural Resources Committee)

(At the request of the North Dakota Geological Survey)

SUBSURFACE MINERAL DEFINITION

AN ACT to amend and reenact subsection 7 of section 38-12-01 and subsection 10 of section 38-15-02 of the North Dakota Century Code, relating to the definition of subsurface minerals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 38-12-01 of the North Dakota Century Code is amended and reenacted as follows:

7. "Subsurface minerals" means ~~and includes~~ all naturally occurring elements; and their compounds, volcanic ash, precious metals, carbonates, and natural mineral salts of boron, bromine, calcium, fluorine, helium, iodine, lithium, magnesium, nitrogen, phosphorus, potassium, sodium, thorium, uranium, and sulfur, and their compounds, but does not include sand and gravel and rocks crushed for sand and gravel.

SECTION 2. AMENDMENT. Subsection 10 of section 38-15-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10. "Subsurface minerals" means all naturally occurring elements and their compounds, volcanic ash, precious metals, carbonates, and natural mineral salts of boron, bromine, calcium, fluorine, helium, iodine, lithium, magnesium, nitrogen, phosphorus, potassium, sodium, thorium, uranium, and sulfur, and their compounds, occurring more than five hundred feet [152.4 meters] below the surface of the land.

Approved March 25, 1997

Filed March 26, 1997

CHAPTER 321**SENATE BILL NO. 2035**

(Legislative Council)
(Government Organization Committee)

**RECLAMATION RESEARCH ADVISORY COMMITTEE
ELIMINATED**

AN ACT to repeal sections 38-14.1-04.1, 38-14.1-04.2, and 38-14.1-04.3 of the North Dakota Century Code, relating to the reclamation research advisory committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Sections 38-14.1-04.1 and 38-14.1-04.3 of the North Dakota Century Code and section 38-14.1-04.2 of the 1995 Supplement to the North Dakota Century Code are repealed.

Approved March 7, 1997
Filed March 10, 1997

CHAPTER 322

SENATE BILL NO. 2351 (Senators Kringstad, Cook, Lindaas) (Representative Martinson)

GRAVEL AND SAND SURFACE MINING RECLAMATION

AN ACT to amend and reenact section 38-16-01.1 of the North Dakota Century Code, relating to gravel and sand surface mining operations and reclamation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-16-01.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

38-16-01.1. Gravel and sand surface mining operations - Reclamation - Civil action - Penalty. Any surface mining operator conducting a gravel or sand surface mining operation on land in this state owned by another person ~~shall~~, upon completion or abandonment of the surface mining operation, shall reclaim the affected land. Each surface mining operator shall negotiate with the landowner a written agreement providing for the reclamation of the affected land. Unless the affected land is to be used for other purposes as agreed upon between the surface mining operator and the landowner, the reclamation agreement must, at a minimum, provide for restoration by the surface mining operator of the affected land as nearly as possible to ~~its original~~ the agreed contour and ~~productivity~~ useability; indicate the amount of topsoil and subsoil to be saved, segregated, and respread; and indicate the party responsible for compaction of backfill, soil testing, fertilization, revegetation, weed control, rock disposal, and replacement or establishment of conservation practices. The reclamation must be within a time period agreed upon between the parties, but within one year after the final cessation of surface mining operations. A landowner may bring a claim for relief in any appropriate district court against the surface mining operator who has failed to reclaim properly affected land pursuant to a reclamation agreement under this section. In an action under this section, a surface mining operator is liable for damage in an amount necessary to reclaim the land. Any person who violates any provision of this section is guilty of a class B misdemeanor.

Approved April 8, 1997
Filed April 8, 1997

MOTOR VEHICLES

CHAPTER 323

HOUSE BILL NO. 1075

(Representatives Carlisle, Henegar, R. Kelsch, Mahoney, Martinson)
(Senator Nalewaja)

DRIVING UNDER THE INFLUENCE PENALTIES

AN ACT to amend and reenact subsection 1 of section 39-01-01 and section 39-08-01 of the North Dakota Century Code, relating to the definition of an appropriate licensed addiction treatment program and to penalties for driving under the influence.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ **SECTION 1. AMENDMENT.** Subsection 1 of section 39-01-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Appropriate licensed addiction treatment program" means an addiction treatment program conducted by an addiction facility licensed by the department of human services or conducted by a licensed individual specifically trained in addiction treatment.

SECTION 2. AMENDMENT. Section 39-08-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-08-01. Persons under the influence of intoxicating liquor or any other drugs or substances not to operate vehicle - Penalty.

1. A person may not drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if any of the following apply:
 - a. That person has an alcohol concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a vehicle.
 - b. That person is under the influence of intoxicating liquor.

¹ Section 39-01-01 was also amended by section 1 of House Bill No. 1310, chapter 324, and section 1 of Senate Bill No. 2159, chapter 325.

- c. That person is under the influence of any drug or substance or combination of drugs or substances to a degree which renders that person incapable of safely driving.
- d. That person is under the combined influence of alcohol and any other drugs or substances to a degree which renders that person incapable of safely driving.

The fact that any person charged with violating this section is or has been legally entitled to use alcohol or other drugs or substances is not a defense against any charge for violating this section, unless a drug which predominately caused impairment was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person.

2. A person violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a five-year period, ~~and of a class A misdemeanor for a later third offense in a five-year period: Notwithstanding the other provisions of this subsection, a person violating this section or equivalent ordinance is guilty~~ of a class A misdemeanor for the fourth ~~or subsequent~~ offense in a seven-year period, and of a class C felony for a fifth or subsequent offense in a seven-year period. The minimum penalty for violating this section is as provided in subsection 4. The court shall take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the director or may make ~~such~~ a subsequent offense finding based on other evidence.
3. Upon conviction, the court may order the motor vehicle number plates of the motor vehicle owned and operated by the offender at the time of the offense to be impounded for the duration of the period of suspension or revocation of the offender's driving privilege by the licensing authority. The impounded number plates must be sent to the director who must retain them for the period of suspension or revocation, subject to their disposition by the court.
4. A person convicted of violating this section, or an equivalent ordinance, must be sentenced in accordance with this subsection.
 - a. For a first offense, the sentence must include both a fine of at least two hundred fifty dollars and an order for addiction evaluation by an appropriate licensed addiction treatment program.
 - b. For a second offense within five years, the sentence must include at least four days' imprisonment of which forty-eight hours must be served consecutively, or ten days' community service; a fine of at least five hundred dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.
 - c. For a third offense within five years, the sentence must include at least sixty days' imprisonment, of which forty-eight hours must be served consecutively; a fine of one thousand dollars, and an order for addiction evaluation by an appropriate licensed addiction treatment program.

- d. For a fourth or subsequent offense within seven years, the sentence must include one hundred eighty days' imprisonment, of which forty-eight hours must be served consecutively and a fine of one thousand dollars.
- e. The execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 4 of section 12.1-32-02 except that a fine or a sentence of imprisonment may be suspended in any of the following instances:
 - (1) Upon conviction of being in actual physical control of a motor vehicle in violation of this section or equivalent ordinance.
 - (2) If the defendant is under age eighteen when convicted except that if the defendant has, within the preceding five years, previously been convicted of violating section 39-08-01 or equivalent ordinance, the sentence must include at least forty-eight consecutive hours imprisonment or in a minimum security facility or at least ten days of community service. The execution of the sentence may not be suspended nor the imposition of sentence deferred under subsection 3 or 4 of section 12.1-32-02.
- f. For purposes of this section, conviction of an offense under a law or ordinance of another state which is equivalent to this section must be considered a prior offense if such offense was committed within the time limitations specified in this subsection.
- g. If the penalty mandated by this section includes imprisonment upon conviction of a violation of this section or equivalent ordinance, and if an addiction evaluation has indicated that the defendant needs treatment, the court may order the defendant to undergo treatment at an appropriate licensed addiction treatment program and the time spent by the defendant in the treatment must be credited as a portion of a sentence of imprisonment under this section.

Approved April 3, 1997
Filed April 3, 1997

CHAPTER 324

HOUSE BILL NO. 1310

(Representatives R. Kelsch, Huether, Stenehjem)
(Senators Holmberg, Robinson)

AUTHORIZED EMERGENCY VEHICLE DEFINITION

AN ACT to amend and reenact subdivision a of subsection 2 of section 39-01-01 of the North Dakota Century Code, relating to authorized emergency vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

² **SECTION 1. AMENDMENT.** Subdivision a of subsection 2 of section 39-01-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. Class A authorized emergency vehicles means:
- (1) Vehicles of a governmentally owned fire department.
 - (2) Vehicles when operated by or under the control of a police officer having authority to enforce the provisions of this title or by a salaried employee of ~~any~~ a municipal police department within the municipality or by ~~any~~ a sheriff or deputy sheriff ~~not to include~~ including special deputy sheriffs, or by the ~~warden of the state penitentiary~~ director of the department of corrections and rehabilitation and his the director's authorized agents who have successfully completed training in the operation of class A authorized emergency vehicles.
 - (3) Vehicles clearly identifiable as property of the department of corrections and rehabilitation when operated or under the control of the director of the department of corrections and rehabilitation.
 - (4) Ambulances.
 - ~~(4)~~ (5) Vehicles operated by or under the control of the director, ~~and~~ or a district deputy game warden of the ~~North Dakota~~ game and fish department.
 - ~~(5)~~ (6) Vehicles owned or leased by the United States ~~government~~ and used for law enforcement purposes.
 - ~~(6)~~ (7) Vehicles designated for the use of the adjutant general ~~and or~~ assistant adjutant general in cases of emergency.

² Section 39-01-01 was also amended by section 1 of House Bill No. 1075, chapter 323, and section 1 of Senate Bill No. 2159, chapter 325.

- (7) (8) Vehicles operated by or under the control of the director of the ~~North Dakota~~ parks and recreation department.
- (9) Vehicles operated by or under the control of a licensed railroad police officer and used for law enforcement purposes.

Approved March 23, 1997

Filed March 24, 1997

CHAPTER 325

SENATE BILL NO. 2159

(Senators Tallackson, Sand)
(Representatives Gorder, Henegar, Monson, Olson)

SNOWMOBILE LIABILITY INSURANCE

AN ACT to create and enact subsection 11 to section 39-24-09 of the North Dakota Century Code, relating to liability insurance for snowmobiles; to amend and reenact subsection 38 of section 39-01-01 and section 39-24-11 of the North Dakota Century Code, relating to the definition of a motor vehicle and liability insurance for snowmobiles; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³ **SECTION 1. AMENDMENT.** Subsection 38 of section 39-01-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

38. "Motor vehicle" includes every vehicle ~~which~~ that is self-propelled, every vehicle ~~which~~ that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, and, for purposes of motor vehicle registration, title registration, and operator's licenses, motorized bicycles. The term does not include a snowmobile as defined in section 39-24-01.

⁴ **SECTION 2.** Subsection 11 of section 39-24-09 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

11. A person may not operate a snowmobile, and an owner of a snowmobile may not knowingly permit the snowmobile to be operated, upon any property maintained, leased, or owned by the state parks and recreation department to which the public has a right of access for snowmobile or other vehicular use, without a policy of liability insurance which insures the person named, and any person using the snowmobile with the express or implied permission of the person named, against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of the snowmobile within this state, subject to the following limits, exclusive of interest and costs, with respect to each snowmobile: twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to the limit for one person, fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and twenty-five thousand dollars because of injury to or destruction of property of others in any one accident. Upon request of a law enforcement officer, a

³ Section 39-01-01 was also amended by section 1 of House Bill No. 1310, chapter 324, and section 1 of House Bill No. 1075, chapter 323.

⁴ Section 39-24-09 was also amended by section 2 of Senate Bill No. 2160, chapter 347.

person operating a snowmobile shall provide proof of liability insurance to that officer within twenty days.

⁵ **SECTION 3. AMENDMENT.** Section 39-24-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-24-11. Penalties. Any person who violates subdivision b, c, or g of subsection 5 of section 39-24-09 is guilty of a class B misdemeanor. Any person who violates subsection 11 of section 39-24-09 is guilty of a class B misdemeanor and must be assessed a fine of at least one hundred dollars. Any person who violates any other provision of section 39-24-09 must be assessed a fee of twenty dollars. Any person, unless specifically exempted, who fails to register as required by section 39-24-02 must be assessed a fee of fifty dollars. If the person provides proof of registration ~~since~~ after the violation, the fee may be reduced by one-half. Any person who violates any other provision of this chapter for which a specific penalty is not provided must be assessed a fee of ten dollars.

Approved April 9, 1997

Filed April 10, 1997

⁵ Section 39-24-11 was also amended by section 4 of Senate Bill No. 2160, chapter 347.

CHAPTER 326**HOUSE BILL NO. 1139**

(Government and Veterans Affairs Committee)
(At the request of the Public Employees Retirement System)

HIGHWAY PATROLMEN'S RETIREMENT BENEFITS

AN ACT to amend and reenact subdivision a of subsection 4 of section 39-03.1-11 of the North Dakota Century Code, relating to computation of retirement benefits for the highway patrolmen's retirement system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision a of subsection 4 of section 39-03.1-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. Normal retirement benefits for all contributors reaching the normal retirement date are payable monthly, and are:
 - (1) The first twenty-five years of credited service multiplied by three and ~~three~~ twenty-five hundredths percent of final average salary.
 - (2) All years in excess of twenty-five years of credited service multiplied by one and three-fourths percent of final average salary.
 - (3) All contributors who retired before ~~July 4, 1995~~ August 1, 1997, are entitled to receive benefits equal to three and ~~three~~ twenty-five hundredths percent of final average salary multiplied by the first twenty-five years of credited service, plus one and three-fourths percent of final average salary multiplied by credited service in excess of twenty-five years, with the increased benefits payable beginning ~~July 4, 1995~~ August 1, 1997.

Approved March 25, 1997
Filed March 26, 1997

CHAPTER 327**SENATE BILL NO. 2337**

(Senator Berg)
(Representative Thorpe)

COLLECTOR LICENSE PLATES

AN ACT to amend and reenact section 39-04-10.6 of the North Dakota Century Code, relating to collector license plates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-04-10.6 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-04-10.6. Registration of motor vehicles owned by collectors. A person who owns a motor vehicle that is at least twenty-five years old but that is not eligible for registration under section 39-04-10.4 may register that motor vehicle as a collector's motor vehicle. The motor vehicle is eligible for ~~such~~ collector's registration if it is owned and operated solely as a collector's item and if the owner owns another motor vehicle the owner uses for general transportation. A motor vehicle qualifies as a collector's item under this section only if it is operated on public streets and highways for the purpose of driving the vehicle to and from active entry and participation in parades, car shows, car rallies, other public gatherings held for the purpose of displaying or selling the vehicle, and to and from service or storage facilities. An applicant for registration of a vehicle as a collector's motor vehicle shall file an affidavit with the ~~registrar~~ director that states the owner's name and address, the make, year, and the manufacturer's identification number of the motor vehicle, and a statement that the motor vehicle is owned and operated solely as a collector's item and not for general transportation purposes. If the ~~registrar~~ director is satisfied that the affidavit is true and correct, the ~~registrar~~ director shall register the motor vehicle as a collector's motor vehicle on the payment of a registration fee of sixty dollars. The registration is valid as long as the collector's motor vehicle is owned by the person who applied for the registration under this section. The ~~registrar~~ director shall design and issue distinctive number plates for collector's motor vehicles registered under this section. In lieu of the distinctive number plates, the owner of the motor vehicle, at the discretion of the director, may display on the motor vehicle number plates from the year in which the motor vehicle was manufactured. The number plates from the year of manufacture may not be used in lieu of distinctive number plates when it would create a duplication of a number in the recordkeeping system of the department. Number plates from the year of manufacture must be legible and must be restored to the satisfaction of the department. A person violating this section or a department rule regarding this section forfeits the right to the registration provided in this section and any registration fees that have been paid.

Approved March 11, 1997
Filed March 13, 1997

CHAPTER 328

SENATE BILL NO. 2269

(Senators B. Stenehjem, Nalewaja, O'Connell)
(Representatives Carlisle, DeKrey)

LAW ENFORCEMENT LICENSE PLATES

AN ACT to create and enact a new section to chapter 39-04 of the North Dakota Century Code, relating to license plates for law enforcement vehicles; and to amend and reenact subdivision b of subsection 2 of section 39-04-18 of the North Dakota Century Code, relating to motor vehicles exempt from registration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 39-04 of the North Dakota Century Code is created and enacted as follows:

Law enforcement plates. Upon request, the department shall issue identical plates that contain the word "SHERIFF" for the vehicles used and owned by a sheriff's department and the word "POLICE" for the motor vehicles used and owned by a city's police department. The plates must be in black letters and on the designed background in use at the time of issuance. The plates must be provided at actual cost. Notwithstanding section 39-04-11, the plates are the property of the law enforcement agency to which issued. At an appropriate time, replacement of the plates must occur whenever the designed background used by the state changes. Notwithstanding section 39-04-11, a motor vehicle that displays a plate under this section must have a clearly visible distinctive identification number on the rear of the vehicle assigned by the appropriate law enforcement agency.

SECTION 2. AMENDMENT. Subdivision b of subsection 2 of section 39-04-18 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- b. Motor vehicles owned by or in possession of Indian mission schools, by this state or any of its agencies, departments, or political subdivisions, including school districts possessing a motor vehicle or vehicles used for driver education instruction, or by any entity located upon the international boundary line between the United States of America and Canada used and maintained as a memorial to commemorate the long-existing relationship of peace and good will between the people and the governments of the United States of America and Canada and to further international peace among the nations of the world; provided, however, that the vehicles must display license plates provided by the department at actual cost. Upon request, qualifying law enforcement motor vehicles must be issued a license plate under section 1 of this Act.

Each motor vehicle loaned or furnished by a licensed North Dakota motor vehicle dealer to a school district in North Dakota to be used exclusively for instructing pupils in the driver education and training program conducted by the school district will be assigned an official license plate bearing a decal with the words "driver

education" appearing on it. The license plates must be used only on the motor vehicles furnished by dealers and used in the driver education program, and for no other purpose except for garaging and safekeeping of the motor vehicle.

No person may use a motor vehicle bearing official license plates bearing a decal with the words "driver education" appearing on it as provided for in this subdivision for any purpose other than driver education course instruction. No person is in violation of this subdivision if he is required by the dealer or a school administrator to house or otherwise protect the vehicle at his home or other facility.

Approved March 21, 1997
Filed March 21, 1997

CHAPTER 329

HOUSE BILL NO. 1346

(Representatives Soukup, Wilkie, Coats)
(Senators Sand, Tallackson)

VETERANS' CEMETERY LICENSE PLATES

AN ACT to create and enact a new section to chapter 39-04 of the North Dakota Century Code, relating to issuance of distinctive motor vehicle license plates to individuals eligible for interment in the North Dakota veterans' cemetery; and to amend and reenact section 21-10-06 of the North Dakota Century Code, relating to the state investment board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 21-10-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

21-10-06. Funds under management of board - Accounts. The board is charged with the investment of the following funds:

1. State bonding fund.
2. Teachers' fund for retirement.
3. State fire and tornado fund.
4. Workers' compensation fund.
5. Veterans' home improvement fund, in accordance with section 37-15-14.1.
6. National guard tuition trust fund.
7. Public employees retirement system.
8. Insurance regulatory trust fund.
9. State risk management fund.
10. Veterans' cemetery trust fund.

Separate accounting must be maintained for each of the above funds. When it is deemed advantageous the moneys of the individual funds may be commingled for investment purposes.

The state investment board may provide investment services to, and manage the money of, any agency, institution, or political subdivision of the state, subject to agreement with the industrial commission. The scope of services to be provided by the state investment board to the agency, institution, or political subdivision must be specified in a written contract. The state investment board ~~is authorized to~~ may charge a fee for providing investment services and any revenue collected must be deposited in the state retirement and investment fund.

SECTION 2. A new section to chapter 39-04 of the North Dakota Century Code is created and enacted as follows:

North Dakota veterans' cemetery number plates.

1. The director may issue distinctive number plates to individuals eligible for interment in the North Dakota veterans' cemetery. The director shall issue a number plate under this section upon receiving:

 - a. Payment of all other fees required under this chapter for registration of a motor vehicle;
 - b. Payment of an annual fee of five dollars for deposit in the highway tax distribution fund; and
 - c. Verification of payment of an annual surcharge of ten dollars paid to the adjutant general.
2. The department shall collect the fees and surcharge under this section. The department shall report to the legislative assembly on the funds collected under this section during each legislative session. The department shall pay the funds collected under subdivision c of subsection 1 to the adjutant general monthly, who then, within ten days of receipt of the funds, shall deposit five dollars of each surcharge in the veterans' cemetery trust fund and the remaining five dollars of each surcharge in the veterans' cemetery maintenance fund in the state treasury. The state investment board shall manage the veterans' cemetery trust fund. The interest in the veterans' cemetery trust fund, subject to legislative appropriation, may be expended for salaries and maintenance of the veterans' cemetery.
3. The veterans' cemetery trust fund may accept funds from private and federal sources.

Approved April 3, 1997

Filed April 3, 1997

CHAPTER 330**HOUSE BILL NO. 1243**

(Representatives Wald, Timm, Skarphol)
(Senator Mutch)

MOTOR VEHICLE BODY DAMAGE DISCLOSURE

AN ACT to amend and reenact sections 39-05-17.2 and 39-05-20.2 of the North Dakota Century Code, relating to motor vehicle body damage disclosure and salvage certificate of title; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-05-17.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-05-17.2. Body damage disclosure - Rules - When required - Penalty.

1. ~~Before January 1, 1992, the~~ The department shall adopt rules relating to the manner and form of disclosing motor vehicle body damage on the certificate of title to a motor vehicle. The rules must provide for a damage disclosure statement from the transferor to the transferee at the time ownership of a motor vehicle is transferred and provide that the department must refuse to transfer the title without the required damage disclosure statement.
2. Motor vehicle body damage disclosure requirements apply only to the transfer of title on all current year models of motor vehicles and those models manufactured in the seven years before the current model year. When a motor vehicle has been subject to this disclosure requirement and more than eight years have elapsed since the date of manufacture, the holder of the certificate of title with the damage disclosure may have the disclosure removed and a new certificate of title issued for a fee of five dollars.
3. As used in this section, "motor vehicle damage" means a change in the body or structure of a motor vehicle, generally resulting from a vehicular crash or accident, including loss by fire, vandalism, weather, or submersion in water, resulting in damage to the motor vehicle which equals or exceeds the greater of five thousand dollars or forty percent of the predamage retail value of the motor vehicle as determined by the national automobile dealers association official used car guide. The term does not include body or structural modifications, normal wear and tear, glass damage, hail damage, or items of normal maintenance and repair.
4. A person repairing, replacing parts, or performing body work on a motor vehicle that is less than eight years old shall provide a statement to the owner of the motor vehicle when the motor vehicle has sustained motor vehicle damage requiring disclosure under this section. The owner shall disclose this damage when ownership of the motor vehicle is transferred. When a vehicle is damaged in excess of seventy-five percent of its retail value as determined by the national automobile dealers

association official used car guide, the person repairing, replacing parts, or performing body work on the motor vehicle that is less than eight years old shall also advise the owner of the motor vehicle that the owner of the vehicle must comply with section 39-05-20.2.

5. The amount of damage to a motor vehicle is determined by adding the retail value of all labor, parts, and material used in repairing the damage. When the retail value of labor has not been determined by a purchase in the ordinary course of business, for example when the labor is performed by the owner of the vehicle, the retail value of the labor is presumed to be the product of the repair time, as provided in a generally accepted autobody repair flat rate manual, multiplied by thirty-five dollars.
6. A person who violates this section or rules adopted pursuant to this section is guilty of a class A misdemeanor.

SECTION 2. AMENDMENT. Section 39-05-20.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-05-20.2. Issuance of salvage certificate of title. ~~Any person or organization who completely destroys or completely dismantles a vehicle so as to cause that vehicle to lose its identity~~ The owner of a vehicle that is damaged in excess of seventy-five percent of its retail value as determined by the national automobile dealers association official used car guide, shall forward the title for that vehicle to the department within ten days and the department shall issue a salvage certificate of title.

If a vehicle for which a salvage certificate of title has been issued is reconstructed, a regular certificate of title may be obtained by completing an application for the certificate. The applicant shall include with the application a certificate of inspection in the form required by the department, the salvage certificate of title, and a five dollar fee. The department shall place on the regular certificate of title and on all subsequent certificates of title issued for the vehicle, a notation that damage disclosure information is available from the department. The department may not issue a new certificate unless the vehicle identification number of the vehicle has been inspected and found to conform to the description given in the application, or unless other proof of the identity of the vehicle has been provided to the satisfaction of the department.

Approved April 8, 1997
Filed April 8, 1997

CHAPTER 331**SENATE BILL NO. 2245**

(Senators O'Connell, Cook, Solberg)
(Representatives S. Kelsh, Kretschmar, Maragos)

CERTIFICATE OF TITLE TRANSFER DOCUMENTS

AN ACT to amend and reenact section 39-05-19 of the North Dakota Century Code, relating to obtaining motor vehicle certificates of title.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-05-19 of the North Dakota Century Code is amended and reenacted as follows:

39-05-19. Obtaining certificate of title for vehicle when ownership obtained by other than voluntary means. Whenever the ownership of any vehicle passes otherwise than by voluntary transfer, the transferee may obtain a certificate of title for the vehicle from the department upon application for the certificate and payment of a fee of five dollars. The application for the certificate must be accompanied by instruments or documents of authority, or ~~certified~~ copies thereof, as may be required by law to evidence or effect a transfer of title in or to chattels in such case. The department, when satisfied of the genuineness and regularity of such transfer, shall issue a new certificate of title to the person entitled thereto.

Approved March 11, 1997
Filed March 13, 1997

CHAPTER 332

SENATE BILL NO. 2109

(Senator B. Stenehjem)

(At the request of the Department of Transportation)

MOTOR VEHICLE OPERATOR LICENSING

AN ACT to amend and reenact subsection 5 of section 39-06-02, sections 39-06-07.1, 39-06-08, subsection 1 of section 39-06-14, sections 39-06-18, 39-06-20, subsection 2 of section 39-06.1-01, section 39-06.1-13, and subsection 6 of section 39-06.2-02 of the North Dakota Century Code, relating to motor vehicle operator's licensing exemptions, proof of name and date of birth, applications of minors, license color, change of address or name, definition of equivalent ordinance, reduction of point total, and definition of commercial motor vehicle.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 39-06-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. A person over sixteen years of age who becomes a resident of ~~the~~ this state of ~~North Dakota~~ and who has in ~~his~~ that person's possession a valid operator's license issued to ~~him~~ that person pursuant to the laws of some other state or ~~province~~ country or by military authorities of the United States may operate a motor vehicle for a period of not more than sixty days after becoming a resident of this state, without being required to have a North Dakota operator's license.

SECTION 2. AMENDMENT. Section 39-06-07.1 of the North Dakota Century Code is amended and reenacted as follows:

39-06-07.1. Proof of name and date of birth for operator's license application.

The name and date of birth on all applications must be verified by a birth certificate or other satisfactory evidence. Applicants must produce documents which will be acceptable as listed below:

1. ~~Birth~~ Certified birth certificate; or
2. Any other documentary evidence which confirms to the satisfaction of the ~~commissioner~~ director the true identity and date of birth of the applicant.

SECTION 3. AMENDMENT. Section 39-06-08 of the North Dakota Century Code is amended and reenacted as follows:

39-06-08. Application of minors. The application of any minor for an instruction permit or operator's license must be signed and verified before a person authorized to administer oaths or the ~~commissioner's~~ director's agent, by the father, mother, or legal guardian, or, in the event there is no parent or legal guardian, then by another responsible adult who is willing to assume the obligation imposed under this chapter upon a person signing the application of a minor.

SECTION 4. AMENDMENT. Subsection 1 of section 39-06-14 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The director, upon payment of a ten dollar fee, shall issue to every qualified applicant an operator's license as applied for in the form prescribed by the director. The license must bear a distinguishing number assigned to the licensee, a color photograph of the licensee, the full name, date of birth, residence address, and a brief description of the licensee, and either a facsimile of the signature of the licensee or a space upon which the licensee shall write the licensee's usual signature. If the licensee is under the age of twenty-one, the photograph must be against a color border or background that is different from the color used for other licensees. If requested on the license application, the license issued by the director must include a statement making an anatomical gift under chapter 23-06.2. No license is valid until it has been signed by the licensee with the licensee's usual signature. The department shall develop a system to require each applicant for an operator's license or renewal of an operator's license to determine whether or not the applicant wishes to be a donor under chapter 23-06.2. For purposes of verification, an officer may require the licensee to write the licensee's signature in the presence of the officer. The director may adopt rules, pursuant to chapter 28-32, relating to the manner in which photographs are to be obtained and placed on operator's licenses. The photograph may be produced by digital imaging or other electronic means and is not a public record.

SECTION 5. AMENDMENT. Section 39-06-18 of the North Dakota Century Code is amended and reenacted as follows:

39-06-18. Duplicate certificates. In the event that a permit or license issued under ~~the provisions of~~ this chapter is lost, mutilated, or destroyed, or contains erroneous information due to a change in name, address, or for any other reason, the person to whom the same was issued may obtain a duplicate, or substitute ~~thereof~~, upon furnishing proof satisfactory to the commissioner that ~~such the~~ permit or license has been lost, mutilated, or destroyed, or is erroneous, and upon payment of ~~an eight dollar a~~ fee. The fee is eight dollars for a duplicate or substitute permit or license for a license or permit that was lost, mutilated, or destroyed, or is being replaced for any other reason, except the fee is three dollars for a duplicate or substitute permit or license for a license or permit that contains erroneous information due to a change in name or address.

SECTION 6. AMENDMENT. Section 39-06-20 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-06-20. Notice of change of address or name. Whenever ~~any~~ a person after applying for or receiving an operator's license or permit moves from the address named in ~~such the~~ application or in the license or permit issued to ~~such that~~ person or when the name of a licensee is changed by marriage or otherwise, ~~such that~~ person shall within ten days thereafter notify the director in writing or in person of ~~such that~~ person's old and new addresses or of such former and new names and of the number of any license or permit then held by ~~such that~~ person. ~~Such~~ A person may obtain a corrected license or permit by making application as provided for in section 39-06-18. In the event of a name change, a corrected license must be obtained. The department may change the address based on information received from any authorized address correction service of the United States postal service.

SECTION 7. AMENDMENT. Subsection 2 of section 39-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Equivalent ordinance" or "equivalent ordinances" means city, state, or other jurisdiction ordinances which are comparable to the cited statute, and define essentially the same offense, despite the fact that the language of the ordinance may differ, or differing procedural points or methods of proof may be provided.

SECTION 8. AMENDMENT. Section 39-06.1-13 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-06.1-13. Reduction of point total - Other methods.

1. The licensing authority shall reduce the point total shown on any licensee's driving record by one point for each three-month period during which no points are recorded against the licensee's driving record for a moving violation or a violation listed in paragraphs 12 through 16 of subdivision a of subsection 3 of section 39-06.1-10. The three-month period must be calculated from the date of entry of the last points against that licensee's driving record.
2. The point total shown on a licensee's driving record must, during any twelve-month period, be reduced by three points when the licensee mails or delivers a certificate to the licensing authority indicating successful completion of instruction in a driver training course approved by the licensing authority. Successful completion of instruction must be certified to by the sponsoring agency or organization of the driver training course. The reduction in points authorized by this subsection must only be from a point total accumulated prior to completion of the necessary hours of driver training instruction, and may not exceed nine points during any three-year period commencing on the date of entry of the last points against the person's driving record. If on the date the licensing authority receives the certificate of completion of the driver training course from the licensee that licensee's driving record contains twelve or more points, the point reduction authorized by this subsection must be applied only after the period of suspension required by the number of points then on the driver's record has been served.
- ~~3. The point total shown on a licensee's driving record must be reduced by seven points for successful completion of an inpatient or outpatient alcoholism or narcotics treatment program approved by the state department of human services. No reduction of points may be made under this subsection, unless the licensee's driving record included, at the time of suspension, points assigned for violation of section 39-08-01, or an equivalent ordinance. The provisions of this subsection shall not have application prior to the termination of the suspension period imposed on the driver.~~

SECTION 9. AMENDMENT. Subsection 6 of section 39-06.2-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles designed or used to transport passengers or property:

- a. If the gross combination weight rating is twenty-six thousand one pounds [11794 kilograms] or more provided the towed unit has a gross vehicle weight rating of more than ten thousand pounds [4536 kilograms];
- b. If the vehicle has a gross vehicle weight rating of more than twenty-six thousand pounds [11793.40 kilograms] or such lesser rating as determined by federal regulation;
- ~~b.~~ c. If the vehicle is designed to transport sixteen or more passengers, including the driver; or
- ~~e.~~ d. If the vehicle is transporting hazardous materials and is required to be placarded in accordance with 49 CFR part 172, subpart F.

Approved March 21, 1997
Filed March 21, 1997

CHAPTER 333**HOUSE BILL NO. 1267**

(Representative Oban)

**MOTOR VEHICLE OPERATOR LICENSE
EXAMINATIONS**

AN ACT to amend and reenact section 39-06-13 of the North Dakota Century Code, relating to motor vehicle operator's license examinations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-06-13 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-06-13. Examination of applicants. The ~~commissioner~~ director shall examine every applicant for an operator's license, except as otherwise provided in this chapter. The examination must include a test of the applicant's eyesight, ability to read and understand highway signs regulating, warning, and directing traffic, and knowledge of the traffic laws of this state. During testing, any written portion of the examination, except writing on illustrations of signs, must be made available to an applicant in any widely practiced language. An actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle is also required, but may be waived for an applicant who has successfully passed ~~such a~~ an actual ability test in this or another state. Operators' examinations must be given at locations designated by the ~~commissioner~~ director. The ~~commissioner~~ director may require ~~such~~ any other physical or mental examination ~~as may be deemed~~ advisable.

Approved April 3, 1997
Filed April 3, 1997

CHAPTER 334

HOUSE BILL NO. 1111

(Representatives Martinson, Carlisle, DeKrey)

(Senators Andrist, Kringstad, Nalewaja)

(At the request of the Department of Transportation)

MINORS DUI CONCENTRATION LEVEL

AN ACT to amend and reenact subsection 7 of section 39-06-32, sections 39-20-01, 39-20-03.1, 39-20-03.2, subsection 1 of section 39-20-04.1, subsections 2, 3, and 5 of section 39-20-05, subsection 3 of section 39-20-07, and section 39-20-09 of the North Dakota Century Code, relating to the illegal level of alcohol and drug concentration for motor vehicle operators under twenty-one years of age.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 39-06-32 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. An administrative decision in another state that the licensee's privilege to drive in that state is suspended or revoked because of a violation of that state's law forbidding motor vehicle operation with an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, or because of a violation of that state's law forbidding the driving or being in actual physical control of a commercial motor vehicle while having an alcohol concentration of at least four one-hundredths of one percent by weight. The specific requirements for establishing the violation in the other state may not be considered and certified copies of the records of the other state's drivers licensing authority are sufficient evidence of the violation. The suspension must be for the same duration as the suspension in section 39-20-04.1, if the violation does not involve a commercial motor vehicle. If the violation involves a commercial motor vehicle, the period of suspension must be the same as the period of suspension provided in section 39-06.2-10.

SECTION 2. AMENDMENT. Section 39-20-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-20-01. Implied consent to determine alcohol and drug content of blood.

Any person who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state is deemed to have given consent, and shall consent, subject to the provisions of this chapter, to a chemical test, or tests, of the blood, breath, saliva, or urine for the purpose of determining the alcohol, other drug, or combination thereof, content of the blood. As used in this chapter the word "drug" means any drug or substance or combination of drugs or substances which renders a person incapable of safely driving, and the words "chemical test" or "chemical analysis" mean any test to determine the alcohol, or other drug, or combination thereof, content of the blood, breath, saliva, or urine, approved by the state toxicologist under this chapter. The

test or tests must be administered at the direction of a law enforcement officer only after placing the person, except persons mentioned in section 39-20-03, under arrest and informing that person that the person is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a child under section 27-20-13 or a person under twenty-one years of age satisfies the requirement of an arrest. The law enforcement officer shall also inform the person charged that refusal of the person to submit to the test determined appropriate will result in a revocation for up to three years of the person's driving privileges. The law enforcement officer shall determine which of the tests is to be used. When a person under the age of eighteen years is taken into custody for violating section 39-08-01 or an equivalent ordinance, the law enforcement officer shall attempt to contact the person's parent or legal guardian to explain the cause for the custody. Neither the law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter. The law enforcement officer shall mail a notice to the parent or legal guardian of the minor within ten days after the test results are received or within ten days after the minor is taken into custody if the minor refuses to submit to testing. The notice must contain a statement of the test performed and the results of that test; or if the minor refuses to submit to the testing, a statement notifying of that fact. The attempt to contact or the contacting or notification of a parent or legal guardian is not a precondition to the admissibility of chemical test results or the finding of a consent to, or refusal of, chemical testing by the person in custody.

SECTION 3. AMENDMENT. Section 39-20-03.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-20-03.1. Action following test result for a resident operator. If a person submits to a test under section 39-20-01, 39-20-02, or 39-20-03 and the test shows that person to have an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a vehicle, the following procedures apply:

1. The law enforcement officer shall immediately take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit if the person then has valid operating privileges, extending driving privileges for the next twenty-five days, or until earlier terminated by the decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.
2. If a test administered under section 39-20-01 or 39-20-03 was by saliva or urine sample or by drawing blood as provided in section 39-20-02 and the person tested is not a resident of an area in which the law enforcement officer has jurisdiction, the law enforcement officer shall, on receiving the analysis of the saliva, urine, or blood from the state toxicologist and if the analysis shows that person had an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight,

either proceed in accordance with subsection 1 during that person's reappearance within the officer's jurisdiction or notify a law enforcement agency having jurisdiction where the person lives. On that notification, that law enforcement agency shall immediately take possession of the person's North Dakota operator's license or permit if it is then available and, within twenty-four hours, forward the license and a copy of the temporary operator's permit to the law enforcement agency making the arrest or to the director. The law enforcement agency shall also, on taking possession of the person's operator's license, issue to that person a temporary operator's permit as provided in this section, and shall sign and date the permit as provided in subsection 1. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.

3. The law enforcement officer, within five days of the issuance of the temporary operator's permit, shall forward to the director a certified written report in the form required by the director and the person's operator's license taken under subsection 1 or 2. If the person was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the person was lawfully arrested, that the person was tested for alcohol concentration under this chapter, and that the results of the test show that the person had an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. In addition to the operator's license and report, the law enforcement officer shall forward to the director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood, saliva, or urine test for all tests administered at the direction of the officer.

SECTION 4. AMENDMENT. Section 39-20-03.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-20-03.2. Action following test result or on refusing test by nonresident operator. If a person licensed in another state refuses in this state to submit to a test provided under section 39-20-01 or 39-20-14, or who submits to a test under section 39-20-01, 39-20-02, or 39-20-03 and the test results show the person to have an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of performance of a test within two hours after driving or being in physical control of a motor vehicle, the following procedures apply:

1. Without taking possession of the person's out-of-state operator's license, the law enforcement officer shall issue to the person a notification of the test results and a temporary operator's permit extending nonresident operating privileges in this state for twenty-five days from the date of issuance or until earlier terminated by the decision of a hearing officer under section 39-20-05. The temporary permit must be signed and dated by the officer and serves as the director's official notification to the

person of the director's intent to revoke, suspend, or deny driving privileges in this state, and of the hearing procedures under this chapter.

2. If the test was administered by saliva or urine sample or by drawing blood, the law enforcement officer, on reviewing the alcohol concentration analysis showing the person had an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, shall mail the person a notification of the test results, a temporary operator's permit extending nonresident operating privileges in this state for twenty-five days from the date of mailing or until earlier terminated by the decision of a hearing officer under section 39-20-05, and notice of the intent to revoke, suspend, or deny driving privileges in this state, together with the notice provided under section 39-06.1-07 of the procedures available under this chapter. The temporary operator's permit must be signed and dated by the officer.
3. The law enforcement officer, within five days of issuing the temporary operator's permit, shall forward to the director a certified written report in the form required by the director and a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood, saliva, or urine test for all tests administered at the direction of the officer. If the person was issued a temporary operator's permit because of the person's refusal to submit to a test under sections 39-20-01 and 39-20-14, the report must include information as provided in section 39-20-04. If the person was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the person was lawfully arrested, that the person was tested for alcohol concentration under this chapter, and that the results of the test show that the person had an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight.

SECTION 5. AMENDMENT. Subsection 1 of section 39-20-04.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. After the receipt of a person's operator's license, if taken under section 39-20-03.1 or 39-20-03.2, and the certified report of a law enforcement officer and if no written request for hearing has been received from the arrested person under section 39-20-05, or if that hearing is requested and the findings, conclusion, and decision from the hearing confirm that the law enforcement officer had reasonable grounds to arrest the person and test results show that the arrested person was driving or in physical control of a vehicle while having an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of the performance of a test within two hours after driving or being in physical control of a motor vehicle, the director shall suspend the person's operator's license as follows:

- a. For ninety-one days if the person's driving record shows that, within the five years preceding the date of the arrest, the person has not previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has not previously been suspended or revoked under this chapter.
- b. For three hundred sixty-five days if the person's driving record shows that, within the five years preceding the date of the arrest, the person has once previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has once previously been suspended or revoked under this chapter.
- c. For two years if the person's driving record shows that within the five years preceding the date of the arrest, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests.

SECTION 6. AMENDMENT. Subsections 2, 3, and 5 of section 39-20-05 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. If the issue to be determined by the hearing concerns license suspension for operating a motor vehicle while having an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was placed under arrest, unless the person was under twenty-one years of age and the alcohol concentration was less than ten one-hundredths of one percent by weight, then arrest is not required and is not an issue under any provision of this chapter; whether the person was tested in accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and whether the test results show the person had an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood, urine, or saliva sample from the state toxicologist, or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol concentration shown therein. Whether the person was informed that the privilege to drive might be suspended based on the results of the test is not an issue.
3. If the issue to be determined by the hearing concerns license revocation for refusing to submit to a test under section 39-20-01 or 39-20-14, the

hearing must be before a hearing officer assigned by the director at a time and place designated by the director. The hearing must be recorded. The scope of a hearing for refusing to submit to a test under section 39-20-01 may cover only the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was placed under arrest; and whether that person refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under section 39-20-14 may cover only the issues of whether the law enforcement officer had reason to believe the person committed a moving traffic violation or was involved in a traffic accident as a driver, whether in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol and, whether the person refused to submit to the onsite screening test. Whether the person was informed that the privilege to drive would be revoked or denied for refusal to submit to the test or tests is not an issue.

5. At the close of the hearing, the hearing officer shall notify the person of the hearing officer's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the hearing officer does not find in favor of the person, the copy of the decision serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. If the hearing officer finds, based on a preponderance of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or that the person had an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing officer shall immediately take possession of the person's temporary operator's permit issued under this chapter. If the hearing officer does not find against the person, the hearing officer shall sign, date, and mark on the person's permit an extension of driving privileges for the next twenty days and shall return the permit to the person. The hearing officer shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing. If the hearing officer has determined in favor of the person, the director shall return the person's operator's license by regular mail to the address on file with the director under section 39-06-20.

⁶ **SECTION 7. AMENDMENT.** Subsection 3 of section 39-20-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

⁶ Section 39-20-07 was also amended by section 1 of House Bill No. 1083, chapter 345, and section 1 of House Bill No. 1084, chapter 346.

3. A person having an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after driving or being in physical control of a vehicle is under the influence of intoxicating liquor at the time of driving or being in physical control of a vehicle.

SECTION 8. AMENDMENT. Section 39-20-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-20-09. Effect of evidence of chemical test. ~~The provisions of this~~ This chapter ~~do~~ does not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of intoxicating liquor, drugs, or a combination thereof, but, if the test results show an alcohol concentration of at least ten one-hundredths of one percent or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the purpose of such evidence must be limited to the issues of probable cause, whether an arrest was made prior to the administering of the test, and the validity of the test results.

Approved April 8, 1997
Filed April 8, 1997

CHAPTER 335**HOUSE BILL NO. 1108**
(Representatives DeKrey, Carlisle)**DRIVING UNDER SUSPENSION PENALTY**

AN ACT to amend and reenact subsection 1 of section 39-06-42 of the North Dakota Century Code, relating to the suspension or revocation of an operator's license; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 39-06-42 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided in chapters 39-16 and 39-16.1 and section 39-06.1-11, any person who drives a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state while that person's license or privilege so to do is suspended or revoked in any jurisdiction is guilty of a class B misdemeanor for the first, second, or third offense within a five-year period. Any subsequent offense within the same five-year period is a class A misdemeanor.

Approved February 11, 1997
Filed February 11, 1997

CHAPTER 336**SENATE BILL NO. 2352**

(Senators Kringstad, Lips, W. Stenehjem)
(Representatives Glassheim, R. Kelsch, Martinson)

NONMOVING VIOLATION FEES

AN ACT to amend and reenact subsection 1 of section 39-06.1-06 of the North Dakota Century Code, relating to fees for nonmoving violations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁷ **SECTION 1. AMENDMENT.** Subsection 1 of section 39-06.1-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. For a nonmoving violation as defined in section 39-06.1-08, a fee of ~~ten~~ any amount not to exceed twenty dollars.

Approved March 25, 1997

Filed March 26, 1997

⁷ Section 39-06.1-06 was also amended by section 1 of House Bill No. 1074, chapter 337.

CHAPTER 337

HOUSE BILL NO. 1074

(Representatives Wald, Belter, Byerly, Grosz)
(Senators Kelsh, Solberg)

HIGHWAY SPEED LIMITS

AN ACT to create and enact a new subdivision to subsection 1 of section 39-09-02 of the North Dakota Century Code, relating to speed limits greater than fifty-five miles an hour; and to amend and reenact subsection 8 of section 39-06.1-06, paragraph 34 of subdivision a of subsection 3 of section 39-06.1-10, and subdivisions f and g of subsection 1 of section 39-09-02 of the North Dakota Century Code, relating to the speed limits and fees and demerits for violations of the speed limit.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁸ **SECTION 1. AMENDMENT.** Subsection 8 of section 39-06.1-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. On a highway on which the speed limit is a speed higher than fifty-five miles [88.51 kilometers] an hour as ~~posted and designated by the commissioner pursuant to subdivision g of subsection 4 of section 39-09-02~~, for a violation of section 39-09-02, or an equivalent ordinance, a fee established as follows:

Miles per hour over lawful speed limit	Fee
1 - 5	\$ 10 plus \$1/each mph over limit
6 - 10	\$ 15 plus \$2/each mph over 5 mph over limit
11 - 15	\$ 15 plus \$3/each mph over 10 mph over limit
16 - 25	\$ 40 plus \$3/each mph over 15 mph over limit
26 - 35	\$ 70 plus \$3/each mph over 25 mph over limit
36 +	\$100 plus \$5/each mph over 35 mph over limit

SECTION 2. AMENDMENT. Paragraph 34 of subdivision a of subsection 3 of section 39-06.1-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- (34) On a highway on which the speed limit is a speed higher than fifty-five miles [88.51 kilometers] an hour as ~~posted and designated by the commissioner pursuant to subdivision g of subsection 4 of~~

⁸ Section 39-06.1-06 was also amended by section 1 of Senate Bill No. 2352, chapter 336.

~~section 39-09-02~~, operating a motor vehicle in excess of the speed limit in violation of section 39-09-02, or equivalent ordinance

Miles per hour over lawful speed limit	Points
6 - 10	1
11 - 15	4
16 - 25	7
26 - 35	10
36 +	12

SECTION 3. AMENDMENT. Subdivisions f and g of subsection 1 of section 39-09-02 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- f. Fifty-five miles [88.51 kilometers] an hour ~~under other circumstances~~ on gravel, dirt, or loose surface highways, and on paved two-lane highways if there is no speed limit posted or if within the time period of one-half hour after sunset to one-half hour before sunrise, unless otherwise permitted, restricted, or required by conditions; ~~and except as provided in subdivision g.~~
- g. ~~If a speed higher than fifty-five~~ Sixty-five miles [~~88.51~~ 104.61 kilometers] an hour ~~is permitted under federal law without loss of federal funds to this state, and on paved two-lane highways if within the time period of one-half hour before sunrise to one-half hour after sunset and if posted for that speed, and on paved and divided multilane highways, unless otherwise permitted, restricted, or required by conditions; any higher speed so permitted and so designated and posted by the commissioner.~~

SECTION 4. A new subdivision to subsection 1 of section 39-09-02 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

Seventy miles [112.65 kilometers] an hour on access controlled, paved and divided, multilane interstate highways, unless otherwise permitted, restricted, or required by conditions.

Approved April 3, 1997
Filed April 3, 1997

CHAPTER 338

SENATE BILL NO. 2212

(Senators O'Connell, Schobinger, B. Stenehjem)
(Representatives Boehm, Maragos, Sveen)

TEMPORARY RESTRICTED MOTOR VEHICLE OPERATORS' LICENSES

AN ACT to amend and reenact subsection 2 of section 39-06.1-11 of the North Dakota Century Code, relating to temporary restricted motor vehicle operators' licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 39-06.1-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. If the licensing authority has suspended a license under chapter 39-20, or after a violation of section 39-08-01 or equivalent ordinance, the authority may, in accordance with this section, for good cause, and upon written application of the offender, issue a temporary restricted license ~~which~~ that takes effect after thirty days of the suspension have been served after a first offense under section 39-08-01 or chapter 39-20. The licensing authority may not issue a temporary restricted license to any offender whose operator's license has been revoked under section 39-20-04 or suspended upon a second or subsequent offense under section 39-08-01 or chapter 39-20, except that a temporary restricted license may be issued for good cause if no offenses have been committed for a period of two years before the date of the filing of a written application accompanied by a report from an addiction facility. The ~~commissioner~~ director may conduct a hearing for the purposes of obtaining information, reports, and evaluations from courts, law enforcement, and citizens to determine the offender's conduct and driving behavior for the two-year period. The ~~commissioner~~ director may also require that an ignition interlock device be installed in the offender's vehicle. The licensing authority may not issue a temporary restricted license for a period of license revocation or suspension imposed under subsection 5 of section 39-06-17, section 39-06-31, or subsection 3.1 of section 39-06.1-10; ~~or section 39-20-04~~. A temporary restricted license may be issued for suspensions ordered under subsection 7 of section 39-06-32 if it could have been issued had the suspension resulted from in-state conduct; ~~but no temporary restricted license may be issued for suspensions ordered under subsection 4 of section 39-06-32.~~

Approved March 13, 1997
Filed March 13, 1997

CHAPTER 339**HOUSE BILL NO. 1224**

(Representative Belter)
(Senator G. Nelson)

**AGRICULTURAL COMMODITY TRANSPORTATION
HOURS OF SERVICE**

AN ACT to create and enact a new section to chapter 39-06.2 of the North Dakota Century Code, relating to commercial drivers transporting agricultural commodities; to amend and reenact section 39-21-44 of the North Dakota Century Code, relating to the transportation of hazardous materials; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 39-06.2 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

Hours of service exemption - Transportation of agricultural commodities.
Federal regulations governing maximum driving and on-duty time do not apply to a driver transporting agricultural commodities or farm supplies, including farm equipment and machinery, for agricultural purposes in this state during planting and harvesting seasons from February fifteenth through December fifteenth, if the transportation is limited to an area within a one hundred air-mile radius from the source of the commodities or the distribution point for the farm supplies.

SECTION 2. AMENDMENT. Section 39-21-44 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-21-44. Vehicle transporting explosives or hazardous materials - Administrative procedure and judicial review. Any person operating any vehicle transporting any explosive or hazardous material as a cargo or part of a cargo upon a highway shall comply with this section.

1. The vehicle must be equipped with at least one fire extinguisher, filled and ready for immediate use, and placed at a convenient point on the vehicle.
2. The superintendent of the state highway patrol shall adopt rules for the safe transportation of hazardous materials. Rules must duplicate or be consistent with current hazardous materials regulations of the United States department of transportation ~~except that a fertilizer or agricultural chemical retailer, or a driver employed by a fertilizer or agricultural chemical retailer, is exempt from the provisions of title 49, Code of Federal Regulations, part 395, section 3, subsection b, relating to hours of service of drivers, and title 49, Code of Federal Regulations, part 395, section 8, requiring a driver's record of duty status, while exclusively engaged in the transportation of fertilizer or agricultural chemicals when the transportation is within a radius of fifty miles [80.47 kilometers] from the retailer's place of business and the employer maintains a daily record for each driver showing the time a driver reports for duty, the total~~

~~number of hours a driver is on duty, and the time a driver is released from duty.~~ The superintendent of the state highway patrol may adopt the hazardous materials regulations by reference and any adoption must be construed to incorporate amendments as may be made from time to time.

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

Approved March 25, 1997

Filed March 26, 1997

CHAPTER 340**SENATE BILL NO. 2090**

(Senator Lips)

(At the request of the Department of Transportation)

**ACCIDENTS INVOLVING SNOW REMOVAL
EQUIPMENT**

AN ACT to amend and reenact section 39-09-01 of the North Dakota Century Code, relating to careless driving involving snow removal equipment; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-09-01 of the North Dakota Century Code is amended and reenacted as follows:

39-09-01. Basic rule - Penalty for violation. No person may drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions. Any person who drives a vehicle upon a highway or private or public property open to the public for the operation of motor vehicles without heed to the requirements or restrictions of this section has committed careless driving, and must be assessed a fee of thirty dollars.

Any person who, by reason of careless driving as herein defined, causes and inflicts injury upon the person of an operator of snow removal equipment engaged in snow removal operations or causes damage in excess of one thousand dollars to snow removal equipment engaged in snow removal is guilty of an infraction.

As used in this section, "snow removal equipment" means a vehicle that is operated by a person employed by or on behalf of an authority in charge of the maintenance of the highway to perform winter maintenance snow and ice removal, including plowing, hauling away, salting, and sanding.

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

Approved March 6, 1997

Filed March 6, 1997

CHAPTER 341

HOUSE BILL NO. 1095

(Representative Coats)

SCHOOLBUS STROBE LIGHTS

AN ACT to amend and reenact subsections 1 and 4 of section 39-10-46, sections 39-21-18, and 39-21-27 of the North Dakota Century Code, relating to schoolbus strobe lights.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 4 of section 39-10-46 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. The driver of a vehicle meeting or overtaking from either direction any schoolbus stopped on the highway shall stop the vehicle before reaching the schoolbus when there is in operation on the schoolbus the flashing red lights; or the stop sign on the control arm; ~~or the safety strobe lights~~ specified in section 39-21-18, and the driver may not proceed until ~~such~~ the schoolbus resumes motion ~~or he, the driver~~ is signaled by the schoolbus driver to proceed, and the flashing red lights; and the stop sign on the control arm; ~~and the safety strobe lights~~ are no longer actuated.
4. Every schoolbus ~~may be equipped with safety strobe lights and~~ must be equipped with a stop sign on a control arm and red visual signals meeting the requirements of section 39-21-18, which may only be actuated by the driver of the schoolbus whenever the vehicle is stopped on the highway to receive or discharge schoolchildren. ~~A schoolbus driver may not actuate the stop sign or the special visual signals:~~
 - a. ~~On city streets on which the receiving or discharging of schoolchildren is prohibited by ordinance;~~
 - b. ~~At intersections or other places where traffic is controlled by traffic-control signals or police officers; or~~
 - e. ~~In designated schoolbus loading areas where the bus is entirely off the roadway.~~

SECTION 2. AMENDMENT. Section 39-21-18 of the North Dakota Century Code is amended and reenacted as follows:

39-21-18. Audible and visual signals on vehicle.

1. Every authorized emergency vehicle must, in addition to any other equipment and distinctive markings required by this chapter, be equipped with a siren, exhaust whistle, or bell capable of causing a minimum sound intensity level of eighty-five decibels; ~~such.~~ The siren or signal must be mounted outside of the vehicle or in front of the radiator.

2. Every schoolbus, except small vehicles such as automobiles, station wagons, suburbans, and van-type vehicles having a seating capacity of up to and including sixteen pupils, and every Any authorized emergency vehicle may be equipped with safety strobe lights and must, in addition to any other equipment and distinctive markings required by this chapter, be equipped with:
 - a. Signal lamps mounted as high and as widely spaced laterally as practicable, which must be capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level, and these lights must have sufficient intensity to be visible at five hundred feet [152.4 meters] in normal sunlight; and
 - b. A stop sign on a control arm that can be activated by the busdriver. The stop sign on the control arm must be located on the left side of the bus; be equipped with a flashing red light; and when activated, extend out from the bus at approximately a ninety degree angle.
3. A police vehicle when used as an authorized emergency vehicle may, ~~but need not~~, be equipped with alternately flashing red lights specified herein and a vehicle designated for the use of the adjutant general or the assistant adjutant general may, ~~but need not~~, be equipped with a siren, exhaust whistle, or bell specified herein.
4. The use of the signal equipment described herein imposes upon drivers of other vehicles the obligation to yield right of way and stop as prescribed in sections 39-10-26 and 39-10-46. Every schoolbus, except vehicles with a seating capacity of less than sixteen students, must be equipped with:
 - a. Signal lamps mounted as high and as widely spaced laterally as practicable, which must be capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level, and these lights must have sufficient intensity to be visible at five hundred feet [152.4] in normal sunlight;
 - b. A stop sign on a control arm that can be activated by the busdriver. The stop sign on the control arm must be located on the left side of the bus, be equipped with a flashing red light, and when activated, extend out from the bus at approximately a ninety degree angle; and
 - c. Safety strobe lights if the schoolbus was manufactured after July 31,1998. Older schoolbuses may have safety strobe lights installed.

SECTION 3. AMENDMENT. Section 39-21-27 of the North Dakota Century Code is amended and reenacted as follows:

39-21-27. Special lighting and warning equipment on schoolbuses.

1. The superintendent of public instruction₁, in cooperation with the registrar₁, is authorized to adopt standards and specifications applicable to lighting equipment on and special warning devices, including the stop

sign on a control arm specified in section 39-21-18, to be carried by schoolbuses and other vehicles transporting children to school for compensation, consistent with the provisions of this chapter, but supplemental thereto. ~~Such~~ The standards and specifications must correlate with and, so far as possible, conform to the specifications then current as approved by the society of automotive engineers.

2. It is unlawful to operate any flashing warning signal light or the stop sign on the control arm specified in section 39-21-18 on ~~any~~ a schoolbus except when ~~any~~ ~~said~~ the schoolbus is stopped on a highway for the purpose of permitting schoolchildren to board or alight from ~~said~~ the schoolbus.
3. Schoolbuses equipped with safety strobe lights pursuant to subsection 4 of section 39-21-18 must have the safety strobe light in operation whenever the schoolbus is being operated upon a highway for purposes of transporting children either to or from school or for a school sanctioned activity. It is unlawful to operate a safety strobe light on a schoolbus when the schoolbus is used for any other purpose.

Approved March 20, 1997

Filed March 20, 1997

CHAPTER 342

HOUSE BILL NO. 1186

(Representatives Belter, Nelson)
(Senators G. Nelson, Wanzek)

FERTILIZER SPREADER MOVEMENT ON HIGHWAYS

AN ACT to amend and reenact subsection 1 of section 39-12-04 of the North Dakota Century Code, relating to commercial movement of fertilizer spreaders and agricultural chemical applicators; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 39-12-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A total outside width, including load thereon, of eight feet six inches [2.59 meters]. This limitation does not apply to:
 - a. Construction and building contractors' equipment and vehicles used to move such equipment which does not exceed ten feet [3.05 meters] in width when being moved by contractors or resident carriers.
 - b. Implements of husbandry being moved by resident farmers, ranchers, dealers, or manufacturers between sunrise and sunset. Furthermore, the limitation does not apply to implements of husbandry being moved between sunset and sunrise by resident farmers, ranchers, dealers, or manufacturers on public state, county, or township highway systems other than interstate highway systems.
 - c. Hay in the stack or bale being moved along the extreme right edge of a roadway between sunrise and sunset by someone other than a commercial mover.
 - d. Commercial movement of haystacks or hay bales with vehicles designed specifically for hauling hay, ~~overwidth~~ commercial movement of self-propelled fertilizer spreaders and self-propelled agricultural chemical applicators, whether operating under their own power or being transported by another vehicle, and overwidth ~~the commercial movement of~~ hay grinders, which may be operated ~~moved~~ on the highway after obtaining a permit issued by the highway patrol. The highway patrol shall issue permits that are valid during daylight hours on any day of the week, or that are valid at all times for the movement of self-propelled fertilizer spreaders and self-propelled agricultural chemical applicators, to any commercial mover entity otherwise qualified under this subdivision. Self-propelled fertilizer spreaders and self-propelled agricultural chemical applicators operating under their own power between sunset and sunrise must display vehicle hazard warning signal lamps as described in subsection 3 of section 39-21-19.1. The

permit is in lieu of registration requirements for the permit period. No permit may be issued, unless proof of financial responsibility in a minimum of three hundred thousand dollars is filed and the appropriate permit fee is paid. The permit may also be issued for hauling hay bales with vehicles or vehicle combinations other than those designed specifically for hauling haystacks. This permit, however, will not be in lieu of registration requirements. All permit fees must be deposited in the state highway distribution fund.

- e. Safety devices that the highway patrol determines are necessary for the safe and efficient operation of motor vehicles may not be included in the calculation of width.
- f. Any nonload carrying safety appurtenance as determined by the highway patrol which extends no more than three inches [7.62 centimeters] from each side of a trailer is excluded from the measurement of trailer width. The width of a trailer is measured across the sidemost load carrying structures, support members, and structural fasteners.
- g. The highway patrol may adopt reasonable rules for those vehicles exempted from the width limitations as provided for in this subsection.

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

Approved March 26, 1997
Filed March 26, 1997

CHAPTER 343

SENATE BILL NO. 2126

(Senator Thompson)

(At the request of the Department of Transportation)

MOBILE HOME DEALER LICENSING FEES

AN ACT to amend and reenact sections 39-18-01 and 39-22.1-01 of the North Dakota Century Code, relating to mobile home and trailer dealer licensing fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-18-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-18-01. Mobile home dealer's license - Fees - Dealer's plates. No person, partnership, corporation, or limited liability company may engage in the business of buying, selling, or exchanging of mobile homes or travel trailers, or advertise or hold ~~himself~~ oneself or itself out to the public as being in the business of buying, selling, or exchanging of mobile homes or travel trailers without first being licensed to do so as hereinafter provided.

Application for dealer's license and renewal license must be made to the department on such forms as the department ~~shall prescribe~~ prescribes and ~~furnish~~ furnishes, and ~~such~~ the application must be accompanied by an annual fee of thirty-five dollars- ~~Such~~ for which must be issued one dealer plate. A dealer's license expires on December thirty-first of each year, and application for renewal of ~~such~~ a dealer's license must be made on or before the expiration of the current dealer's license.

A mobile home dealer's license must be issued only to those who will maintain a permanent office and place of business, and an adequate service department, during the licensing year, and will abide by all the provisions of law pertaining to mobile home dealers.

In addition, the dealer shall maintain ~~his~~ that person's business records in one central location.

Upon the payment of the fee of ten dollars for each additional plate, the department shall register and issue dealer's license plates for use on any mobile homes owned by the licensed dealer, and ~~such~~ the mobile homes bearing ~~such~~ the dealer's license plates may be lawfully operated upon the public highways of the state of North Dakota by ~~such~~ the dealer, ~~his~~ the dealer's agents and servants, during the year of ~~such~~ the registration. ~~Such~~ A dealer's license plates expire on December thirty-first of each year.

The term "mobile home" as used in this chapter includes and has the same meaning as "housetrailer", and both terms have the meaning prescribed in subsection 82 of section 39-01-01. The term "travel trailer" as used in this chapter has the meaning as prescribed in section 39-01-01.

Any mobile home dealer licensed under the provisions of this chapter may sell house cars without being licensed under the provisions of chapter 39-22. A mobile home dealer plate displayed on a house car must be displayed on the rear of the vehicle.

SECTION 2. AMENDMENT. Section 39-22.1-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-22.1-01. Trailer dealer's license - Fees - Plates. No person, partnership, corporation, or limited liability company may engage in the business of buying, selling, or exchanging of trailers, or advertise or hold oneself or itself out to the public as being in the business of buying, selling, or exchanging of trailers without first being licensed to do so as hereinafter provided.

Application for dealer's license and renewal license must be made to the director on such forms as the director ~~shall prescribe~~ prescribes and ~~furnish~~ furnishes, and ~~such the~~ application must be accompanied by an annual fee of ~~twenty~~ thirty dollars. ~~Such~~ for which must be issued one dealer plate. A dealer's license expires on December thirty-first of each year, and application for renewal of ~~such a~~ dealer's license must be made on or before the expiration of the current dealer's license.

A trailer dealer's license may be issued only to those who will maintain a permanent office and place of business and will abide by all the provisions of law pertaining to trailer dealers. In addition, the dealer shall maintain ~~his~~ that person's business records in one central location.

Upon the payment of a fee of ten dollars for each additional plate, the director shall register and issue dealer's license plates for use on any trailers owned by the licensed dealer, and ~~such the~~ trailers bearing ~~such the~~ dealer's license plates may be lawfully operated upon the public highways of the state of North Dakota by ~~such the~~ dealer, the dealer's agents or representatives, during the year of ~~such the~~ registration. ~~Such~~ A dealer's license plates expire on December thirty-first of each year.

The term "trailer" as used in this chapter does not include those trailers exempt from registration in chapter 39-04.

Approved March 11, 1997
Filed March 13, 1997

CHAPTER 344

HOUSE BILL NO. 1364

(Representatives Delmore, Mahoney, Maragos)
(Senators Nething, St. Aubyn)

PARK MODEL TRAILER FEES

AN ACT to create and enact a new section to chapter 39-04 of the North Dakota Century Code, relating to park model trailer fees; to amend and reenact subsection 2 of section 57-40.3-01 and subsection 2 of section 57-55-10 of the North Dakota Century Code, relating to the definition of motor vehicle and a mobile home tax exemption for a park model trailer; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 39-04 of the North Dakota Century Code is created and enacted as follows:

Park model trailer fee. The owner of a park model trailer, as defined in subsection 2 of section 57-55-10, shall pay the department a fee of twenty dollars per calendar year to qualify for the exemption under section 57-55-10. The department shall issue a receipt for payment of the fee under this section but payment of the fee does not confer any rights to the owner of a park model trailer which are not otherwise provided by law. Fees collected under this section must be deposited in the highway tax distribution fund.

SECTION 2. AMENDMENT. Subsection 2 of section 57-40.3-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Motor vehicle" includes every vehicle ~~which~~ that is self-propelled and every vehicle ~~which~~ that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, every trailer, semitrailer, park model trailer as defined in subsection 2 of section 57-55-10, all-terrain vehicle, snowmobile, and travel trailer for which a certificate of title is required to be obtained ~~pursuant to the provisions of~~ under chapter 39-05, but not including house trailers, or mobile homes.

SECTION 3. AMENDMENT. Subsection 2 of section 57-55-10 of the North Dakota Century Code is amended and reenacted as follows:

2. The provisions of this chapter shall not apply to a mobile home ~~which~~ that:
 - a. Is used only for the temporary living quarters of the owner or other occupant while such person is engaged in recreational or vacation activities, provided that such unit ~~displays~~:
 - (1) Displays a current travel trailer license; or
 - (2) Is a park model trailer that is used only for seasonal or recreational living quarters, and which is located in a trailer park or campground and for which the owner has paid a

park model trailer fee under section 1 of this Act. For purposes of this paragraph, "park model" trailer means a recreational vehicle not exceeding forty feet [12.19 meters] in length which is primarily designed to provide temporary living quarters for recreation, camping, or seasonal use; is built on a single chassis; is mounted on wheels; has a gross trailer area not exceeding four hundred square feet [37.16 square meters] of enclosed living space in the setup mode; and is certified by the manufacturer as complying with American national standards institute standard A119.5.

- b. Qualifies as a farm residence as described by subsection 15 of section 57-02-08, provided such mobile home is permanently attached to the ground.
- c. Is permanently attached to a foundation and is assessed as real property, provided the owner of such mobile home also owns the land on which such mobile home is located.
- d. Is owned by a licensed mobile home dealer who holds such mobile home solely for the purpose of resale, and provided that such mobile home is not used as living quarters or as the place for the conducting of any business.

SECTION 4. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for the first two taxable years beginning after December 31, 1996, and is thereafter ineffective.

Approved April 3, 1997
Filed April 3, 1997

CHAPTER 345**HOUSE BILL NO. 1083**

(Representatives Mahoney, Carlisle, DeKrey)

DRIVING WHILE INTOXICATED TESTING

AN ACT to amend and reenact subsection 8 of section 39-20-07 of the North Dakota Century Code, relating to the testing for driving while intoxicated.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁹ **SECTION 1. AMENDMENT.** Subsection 8 of section 39-20-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. A certified copy of the analytical report of a blood, urine, or saliva analysis referred to in subsection 5 and which is issued by the state toxicologist must be accepted as prima facie evidence of the results of a chemical analysis performed under this chapter. The certified copy satisfies the directives of subsection 5.

Approved April 2, 1997
Filed April 3, 1997

⁹ Section 39-20-07 was also amended by section 1 of House Bill No. 1084, chapter 346, and section 7 of House Bill No. 1111, chapter 334.

CHAPTER 346

HOUSE BILL NO. 1084

(Representatives Carlisle, DeKrey, Mahoney)
(Senator Nalewaja)

DRIVING WHILE INTOXICATED TESTIMONY

AN ACT to amend and reenact subsection 9 of section 39-20-07 of the North Dakota Century Code, relating to testimony on testing for driving while intoxicated.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁰ **SECTION 1. AMENDMENT.** Subsection 9 of section 39-20-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9. Notwithstanding any statute or rule to the contrary, the a defendant who has been found to be indigent by the court in any the criminal proceeding at issue may subpoena, without cost to the defendant, the person who conducted the chemical analysis referred to in this section to testify at the trial on the issue of the amount of alcohol, drugs, or a combination thereof in the defendant's blood, breath, saliva, or urine at the time of the alleged act. If the state toxicologist, the director of the forensic sciences division of the state department of health, or any employee of either, is subpoenaed to testify by a defendant who is not indigent and the defendant does not call the witness to establish relevant evidence, the court shall order the defendant to pay costs to the witness as provided in section 31-01-16.

Approved March 27, 1997
Filed March 27, 1997

¹⁰ Section 39-20-07 was also amended by section 1 of House Bill No. 1083, chapter 345, and section 7 of House Bill No. 1111, chapter 334.

CHAPTER 347**SENATE BILL NO. 2160**

(Senators Tallackson, Sand)
(Representatives Gorder, Henegar, Monson, Olson)

SNOWMOBILE OPERATION UNDER THE INFLUENCE

AN ACT to create and enact a new subsection to section 12-60-16.4, a new subsection to section 20.1-02-15.1, and chapter 39-24.1 of the North Dakota Century Code, relating to implied consent for snowmobile operators; to amend and reenact subdivision c of subsection 5 of section 39-24-09, and section 39-24-11 of the North Dakota Century Code, relating to driving a snowmobile while under the influence of an intoxicating liquor or drug; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹ **SECTION 1.** A new subsection to section 12-60-16.4 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

Infractions and misdemeanor violations of subdivision c of subsection 5 of section 39-24-09 and chapter 39-24.1.

¹² **SECTION 2. AMENDMENT.** Subdivision c of subsection 5 of section 39-24-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- c. While under the influence of intoxicating liquor or a ~~controlled substance~~ drug as defined in section 39-24.1-01, or a combination thereof.

SECTION 3. A new subsection to section 20.1-02-15.1 of the North Dakota Century Code is created and enacted as follows:

To enforce chapter 39-24.1.

¹³ **SECTION 4. AMENDMENT.** Section 39-24-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-24-11. Penalties. Any person who violates subdivision b, ~~e~~, or g of subsection 5 of section 39-24-09 is guilty of a class B misdemeanor. Any person who violates subdivision c of subsection 5 of section 39-24-09 is guilty of an

¹¹ Section 12-60-16.4 was also amended by section 1 of Senate Bill No. 2085, chapter 117, and section 1 of House Bill No. 1167, chapter 428.

¹² Section 39-24-09 was also amended by section 2 of Senate Bill No. 2159, chapter 325.

¹³ Section 39-24-11 was also amended by section 3 of Senate Bill No. 2159, chapter 325.

infraction or a class B misdemeanor as determined by section 39-24.1-07. Any person who violates any other provision of section 39-24-09 must be assessed a fee of twenty dollars. Any person, unless specifically exempted, who fails to register as required by section 39-24-02 must be assessed a fee of fifty dollars. If the person provides proof of registration since the violation, the fee may be reduced by one-half. Any person who violates any other provision of this chapter for which a specific penalty is not provided must be assessed a fee of ten dollars.

SECTION 5. Chapter 39-24.1 of the North Dakota Century Code is created and enacted as follows:

39-24.1-01. Implied consent to determine alcoholic and drug content of blood.

A person who operates a snowmobile on any public land or private land with public access is deemed to have given consent, and shall consent, subject to this chapter, to a chemical test, or tests, of the blood, breath, saliva, or urine for the purpose of determining the alcoholic, other drug, or combination thereof, content of the blood. As used in this chapter, the definitions in section 39-24-01 apply, and in addition, "chemical test" means any test or tests to determine the alcoholic, or other drug, or combination thereof, content of the blood, breath, saliva, or urine, approved by the state toxicologist under this chapter; and "drug" means any drug or substance or combination of drugs or substances which renders a person incapable of safely operating a snowmobile. The chemical test must be administered at the direction of a law enforcement officer only after placing the person, except persons mentioned in section 39-24.1-04, under arrest and informing that person that the person is or will be charged with the offense of operating a snowmobile while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a minor under section 27-20-13 satisfies the requirement of an arrest. The law enforcement officer shall also inform the person charged that refusal of the person to submit to the chemical test determined appropriate will result in that person being prohibited from operating a snowmobile for up to three years. The law enforcement officer shall determine the chemical test to be used. When a minor is taken into custody for violating subdivision c of subsection 5 of section 39-24-09, the law enforcement officer shall diligently attempt to contact the minor's parent or legal guardian to explain the cause for the custody and the implied consent chemical testing requirements. Neither the law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter.

39-24.1-02. Chemical test of operator in serious bodily injury or fatal accident.

Notwithstanding section 39-24.1-01 or 39-24.1-06, when the operator of a snowmobile is involved in an accident resulting in the death or serious bodily injury, as defined in section 12.1-01-04, of another person, and there is probable cause to believe that the operator is in violation of subdivision c of subsection 5 of section 39-24-09, the operator may be compelled by a law enforcement officer to submit to a chemical test.

39-24.1-03. Persons qualified to administer chemical test and opportunity for additional test. Only a physician, or a qualified technician, chemist, or registered nurse acting at the request of a law enforcement officer may withdraw blood for the purpose of determining the alcoholic, drug, or combination thereof, content of the blood. This limitation does not apply to the taking of a breath, saliva, or urine specimen. The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of that person's own choosing administer a chemical test in addition to any administered at the direction of a law enforcement officer with all costs of the additional chemical test to be the

responsibility of the person charged. The failure or inability to obtain an additional chemical test by a person does not preclude the admission of the chemical test taken at the direction of a law enforcement officer. Upon the request of the person who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood, urine, or saliva sample test taken at the direction of the law enforcement officer must be made available to that person by the law enforcement agency that administered the chemical test.

39-24.1-04. Consent of person incapable of refusal not withdrawn. Any person who is dead, unconscious, or otherwise in a condition rendering that person incapable of refusal is deemed not to have withdrawn the consent provided by section 39-24.1-01 and the chemical test may be given.

39-24.1-05. Action following chemical test result for a snowmobile operator. If a person submits to a chemical test under section 39-24.1-01, 39-24.1-03, or 39-24.1-04 and the test shows that person to have the presence of a drug in that person's body or an alcohol concentration of at least ten one-hundredths of one percent by weight at the time of the performance of the test within two hours after the operating of a snowmobile, the test is evidence of a per se violation of subdivision c of subsection 5 of section 39-24-09.

39-24.1-06. Revocation of privilege to operate snowmobile upon refusal to submit to testing.

1. If a person refuses to submit to testing under section 39-24.1-01, no chemical test may be given, but the law enforcement officer immediately shall issue to that person a summons or otherwise notify that person in writing to appear at the time and place specified in the summons or notice. The hearing and any appeal must be conducted as provided in section 39-06.1-03. If the person requests a hearing at a time and date other than as stated in the summons or notice, that person must post an appearance bond as required by subsection 2 of section 39-06.1-03. Upon establishing at the hearing by a preponderance of the evidence that the officer had probable cause to believe the person had been operating a snowmobile while in violation of subdivision c of subsection 5 of section 39-24-09 or had observed that the snowmobile was operated in a negligent, reckless, or hazardous manner as defined by the director by rule, that the person was lawfully arrested if applicable, and that the person had refused to submit to the chemical test under section 39-24.1-01, the court shall prohibit the person from operating a snowmobile on all public land or private land with public access for the appropriate period under this section, and shall impose a noncriminal statutory fee of five hundred dollars. A violation of this section must be reported to the parks and recreation department. The department shall keep a record of all reported violations. The period for which a person is prohibited from operating a snowmobile under this section is:
 - a. One year if the person's record shows that within the five years preceding the most recent refusal under this section, the person has not been prohibited from operating a snowmobile for a violation of this chapter or for a violation of subdivision c of subsection 5 of section 39-24-09.
 - b. Two years if the person's record shows that within the five years preceding the most recent refusal under this section, the person has

2. Notwithstanding subsection 7 of section 12.1-32-01, if the person's record indicates that, within the five years preceding the date of the offense, the person has one violation of subdivision c of subsection 5 of section 39-24-09 or the person has once been prohibited from operating a snowmobile under this chapter, the offense is an infraction. The court shall impose a minimum fine of three hundred fifty dollars and, as a condition of that person's probation, shall prohibit that person from operating a snowmobile on all public land or private land with public access for one year from the date of the sentence.
3. If the person's record indicates that, within the five years preceding the date of the offense, the person has two violations of subdivision c of subsection 5 of section 39-24-09 or the person has twice been prohibited from operating a snowmobile under this chapter, the offense is a class B misdemeanor. The court shall impose a minimum fine of four hundred fifty dollars and, as a condition of that person's probation, shall prohibit that person from operating a snowmobile on all public land or private land with public access for two years from the date of the sentence.

39-24.1-08. Interpretation of chemical tests. Upon the trial of any action or proceeding arising out of acts alleged to have been committed by any person while operating a snowmobile while under the influence of intoxicating liquor, drugs, or a combination thereof, evidence of the amount of alcohol, drugs, or a combination thereof in the person's blood at the time of the act alleged as shown by a chemical analysis of the blood, breath, saliva, or urine is admissible. For the purpose of this section:

1. A person having a drug in that person's body or an alcohol concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after operating a snowmobile is under the influence of intoxicating liquor, drugs, or a combination thereof at the time of operating a snowmobile.
2. Alcohol concentration is based upon grams of alcohol per one hundred cubic centimeters of blood or grams of alcohol per two hundred ten liters of alveolar air or grams of alcohol per sixty-seven cubic centimeters of urine.
3. The results of the chemical test must be received in evidence when it is shown that the sample was properly obtained and the test was fairly administered, and if the test is shown to have been performed according to methods and with devices approved by the state toxicologist, and by an individual possessing a certificate of qualification to administer the test issued by the state toxicologist. The state toxicologist is authorized to approve satisfactory devices and methods of chemical tests and determine the qualifications of individuals to conduct such tests, and shall issue a certificate to every qualified operator. An operator shall exhibit the certificate upon demand of the person requested to take the chemical test.
4. The state toxicologist may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the state toxicologist for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the persons qualified to administer them, the state toxicologist shall prepare and file written

record of the approval with the director and the clerk of the district court in each county and shall include in the record:

- a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
- b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
- c. The operational checklist and forms prescribing the methods currently approved by the state toxicologist in using the devices during the administration of the tests.

The material filed under this subsection may be supplemented when the state toxicologist determines it to be necessary, and any supplemental material has the same force and effect as the material that it supplements.

5. Copies of the records referred to in subsections 3 and 4, certified by the clerk of the district court, must be admitted as prima facie evidence of the matters stated in the records.
6. A certified copy of the analytical report of a blood, urine, or saliva test issued by the state toxicologist must be accepted as prima facie evidence of the results of a chemical test performed under this chapter.
7. Notwithstanding any statute or rule to the contrary, the defendant in any criminal proceeding may subpoena, without cost to the defendant, the person who conducted the chemical test referred to in this section to testify at the trial on the issue of the amount of alcohol, drugs, or a combination thereof in the defendant's blood, breath, saliva, or urine at the time of the alleged act.
8. A signed statement from the nurse or medical technician drawing the blood sample for testing as set forth in subsection 3 is prima facie evidence that the blood sample was properly drawn and no further foundation for the admission of such evidence may be required.

39-24.1-09. Proof of refusal admissible in any action or proceeding. If the person under arrest refuses to submit to the chemical test, proof of refusal is admissible in any action or proceeding arising out of acts alleged to have been committed while the person was operating a snowmobile while under the influence of intoxicating liquor, drugs, or a combination thereof.

39-24.1-10. Effect of evidence of chemical test. This chapter does not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of intoxicating liquor, drugs, or a combination thereof, but, if the chemical test results show a drug or an alcohol concentration of at least ten one-hundredths of one percent, the purpose of the evidence must be limited to the issues of probable cause, whether an arrest was made prior to the administering of the test, and the validity of the test results.

39-24.1-11. Liability. Any licensed physician, nurse, technician, or an employee of a hospital who draws blood from any person pursuant to a request of

any arresting officer is not liable in any civil action for damages arising out of the act except for gross negligence.

39-24.1-12. Operation of snowmobile during period of prohibition - Penalty.

Any person who operates a snowmobile on any public land or private land with public access during the period the person is prohibited from operating a snowmobile under this chapter is guilty of a class A misdemeanor.

39-24.1-13. Fleeing or attempting to elude a peace officer.

1. Any driver of a snowmobile who willfully fails or refuses to bring the snowmobile to a stop, or who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or peace officer, when given a visual or audible signal to bring the snowmobile to a stop, is guilty of a class B misdemeanor for a first or second offense and a class A misdemeanor for a subsequent offense. A signal complies with this section if the signal is perceptible to the driver and:
 - a. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the stopping vehicle is appropriately marked showing it to be an official police vehicle; or
 - b. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform and prominently displays the officer's badge of office.
2. Any sentence imposed under this section must include a minimum fine of at least five hundred dollars.

Approved April 9, 1997
Filed April 10, 1997

CHAPTER 348

SENATE BILL NO. 2264 (Senators Mutch, Thompson)

INTRASTATE COMMERCIAL DRIVER HOURS OF SERVICE

AN ACT to provide for exemptions from hours of service provisions for intrastate commercial drivers; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definition of intrastate driver. As used in this Act, "intrastate driver" means a driver who will be operating a commercial motor vehicle within this state for a seven-consecutive-day period.

SECTION 2. Intrastate exemptions from federal hours of service provisions.

1. The following intrastate drivers are not subject to hours of service limitations:
 - a. A driver of an authorized emergency vehicle.
 - b. A driver who operates a motor vehicle that has a manufacturer's gross vehicle weight rating equal to or less than twenty-six thousand pounds [11793.40 kilograms] and that is not transporting hazardous materials.
 - c. A driver of a tow truck operating at the request of a law enforcement officer.
2. Except for a driver included in subsection 1, a motor carrier may not permit or require any intrastate driver to drive and an intrastate driver may not drive:
 - a. More than twelve hours following eight consecutive hours off duty.
 - b. For any period after having been on duty more than fifteen hours.
 - c. After having been on duty for seventy hours in any period of seven consecutive days unless operating within an area having a one hundred fifty air mile radius from the driver's home post office or a one hundred fifty air mile radius from the official worksite of the vehicle if:
 - (1) The driver returns to the work reporting location and is released within twelve consecutive hours.
 - (2) At least eight consecutive hours off duty separate each twelve hours on duty.

- (3) The driver does not exceed twelve hours maximum driving time following eight consecutive hours off duty.
 - (4) The person that employs the driver maintains and retains for a period of six months accurate time records showing the time the driver reports for duty each day, the total number of hours the driver is on duty each day, and the time the driver is released from duty each day.
 3. Following twenty-four consecutive hours off, an intrastate driver begins a new seven-consecutive-day period and on-duty time is reset to zero.
 4. Hours of service limitations do not apply to an intrastate driver when transporting property or passengers during a declared emergency. The employer must declare and document that the emergency is necessary to assure the protection of public health and safety or to provide other essential assistance to the public. An employer shall maintain documentation for one year and shall make it available upon request of a law enforcement officer. Under this subsection, an emergency is the result of any natural activities, including a tornado, windstorm, thunderstorm, snowstorm, ice storm, blizzard, drought, mudslide, flood, high water, earthquake, forest fire, explosion, blackout, or other occurrence, natural or manmade, which interrupts delivery of essential services, such as electricity, medical care, sewer, water, telecommunications transmissions, or essential supplies, such as food and fuels, or otherwise threatens human life or public welfare.
 5. a. An intrastate driver, except for a driver salesperson, is released from duty each day, total hours on duty each day, and total time for the preceding seven days recordkeeping requirements if:
 - (1) The driver operates within a one hundred fifty air mile radius of the normal work reporting location, returns to the work reporting location, and is released from work within twelve consecutive hours;
 - (2) The driver has eight consecutive hours off duty separating each twelve hours on duty;
 - (3) The driver does not exceed the twelve hours maximum driving time following eight consecutive hours off duty; and
 - (4) The motor carrier maintains accurate and true records of the time the driver reports for duty each day.
 - b. An intrastate driver under subdivision a shall comply with the seventy hour per seven day limit and shall keep track of the total time for the preceding seven days.

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

Approved March 25, 1997
Filed March 26, 1997

CHAPTER 349

HOUSE BILL NO. 1103

(Representative Sveen)

(At the request of the Department of Transportation)

DRIVER AND MOTOR VEHICLE RECORD PRIVACY

AN ACT to provide for the privacy of driver and motor vehicle records; to amend and reenact section 39-02-05 of the North Dakota Century Code, relating to records of the department; to provide a penalty; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Department" means the department of transportation, or an authorized agent or contractor of the department responsible for compiling and maintaining motor vehicle records.
2. "Disclose" means to engage in any practice or conduct to make available and make known personal information contained in a motor vehicle record about a person to any other person by any means of communication.
3. "Individual record" means a motor vehicle record containing personal information about a designated person who is the subject of the record as identified in a request.
4. "Motor vehicle record" means any record that pertains to a motor vehicle operator's license or permit, motor vehicle registration, motor vehicle title, or identification document issued by the department, or other state or local agency authorized to issue any of such forms of credentials. A record includes all books, papers, photographs, photostats, cards, films, tapes, recordings, electronic data, printouts or other documentary materials regardless of physical form or characteristics.
5. "Person" does not include an agency of this state.
6. "Personal information" means information that identifies a person, including an individual's photograph or computerized image, social security number, driver identification number, name, address, telephone number, and medical or disability information. The term does not include the five-digit zip code of an address, information on vehicular accidents, driving or equipment-related violations, and operator's license or registration status.

SECTION 2. Disclosure and use of personal information from department records prohibited. Notwithstanding any other provision of law, except as provided in sections 3, 4, and 5 of this Act, the department may not disclose personal information about any person obtained by the department in connection with a motor vehicle record.

SECTION 3. Required disclosures. Personal information referred to in section 2 of this Act must be disclosed for use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles and dealers by motor vehicle manufacturers; and removal of nonowner records from the original owner records of motor vehicle manufacturers in accordance with federal law.

SECTION 4. Disclosure with consent. Personal information referred to in section 2 of this Act may be disclosed to any requester, if the requester demonstrates in the form and manner prescribed by the department that the requester has obtained the written consent of the person who is the subject of the information.

SECTION 5. Permitted disclosures. The department may disclose personal information referred to in section 2 of this Act to any person, on proof of the identity of the person requesting a record and representation by the requester that the use of the personal information will be strictly limited to one or more of the following:

1. For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person acting on behalf of a government agency in carrying out its functions.
2. For use in connection with matters of motor vehicles or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts, and dealers; motor vehicle market research activities, including survey research; and removal of nonowner records from the original owner records of motor vehicle manufacturers.
3. For use in the normal course of business by a legitimate business or its agents, employees, or contractors:
 - a. To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and
 - b. If the information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual.
4. For use in connection with any proceeding in any court or government agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of any court.
5. For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.
6. For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating, or underwriting.

7. For use in providing notice to the owner or lienholder of a towed or impounded vehicle.
8. For use by any licensed private investigative agency or licensed security service for any purpose permitted under this section.
9. For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license which is required under the Commercial Motor Vehicle Safety Act of 1986 [title XII of Pub. L. 99-570].
10. For use in connection with the operation of private toll transportation facilities.
11. For any use specifically authorized by law that is related to the operation of a motor vehicle or public safety.
12. For any other use in response to requests for individual motor vehicle records if the department has provided in a clear and conspicuous manner on forms for issuance or renewal of operator's permits, titles, registrations, or identification cards, notice that personal information collected by the department may be disclosed to any person, and the department has provided in a clear and conspicuous manner on the forms an opportunity to prohibit disclosure.
13. For bulk distribution for surveys, marketing, or solicitations if the motor vehicle department has implemented methods and procedures to ensure that:
 - a. Individuals are provided an opportunity, in a clear and conspicuous manner, to prohibit those uses; and
 - b. The information disclosed may not be used for surveys, marketing, or solicitations directed at the individuals choosing to prohibit those uses.

SECTION 6. Fees. Disclosure of personal information required or permitted under sections 3, 4, and 5 of this Act is subject to payment by the requesting person to the department of all fees for the information required by law, or the terms of any contract with the requesting person, on the terms for payment as may be required or agreed.

SECTION 7. Additional conditions. Before the disclosure of personal information under sections 3, 4, and 5 of this Act, the department may require reasonable assurance concerning the identity of the requesting person, the use to be only as authorized, and the consent of the person who is the subject of the information to be obtained. These conditions may include the making and filing of a written application in a form and containing information and certification requirements as the department may prescribe.

SECTION 8. Resale or redisclosure.

1. An authorized recipient of personal information may resell or redisclose the information for any use permitted under section 5.

2. The department shall require any authorized recipient who resells or rediscloses personal information to maintain for a period of not less than five years records as to the person receiving the information and the permitted use for which it was obtained, and to make these records available for inspection by the department, upon request.

SECTION 9. Regulations and waiver procedure. Upon receiving a request for personal information that is not subject to disclosure in accordance with the exception provisions of sections 3, 4, and 5, the department may mail a copy of the request to each individual who is the subject of the information, informing the individual of the request, together with a statement to the effect that disclosure is prohibited and will not be made unless the individual affirmatively elects to waive the individual's rights to privacy under sections 1 through 10 of this Act.

SECTION 10. Penalty for false representation. Any person requesting the disclosure of personal information from department records who misrepresents that person's identity or makes a false statement to the department on any application required to be submitted pursuant to sections 1 through 10 of this Act is guilty of a class A misdemeanor.

SECTION 11. AMENDMENT. Section 39-02-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-02-05. Records of the department open to public inspection. ~~All~~ Except as provided by sections 1 through 10 of this Act, all registration and license records in the office of the department must be public records and must be open to inspection by the public during business hours. The director shall charge a uniform fee, not to exceed three dollars, for each item of information furnished to any person concerning a specific motor vehicle. However, such charges may not be assessed to a person requesting information concerning a motor vehicle of which he is the owner, nor may such charges apply to law enforcement officials requesting motor vehicle information in their official capacity. All fees received under the provisions of this section must be credited to the motor vehicle registration fund.

SECTION 12. EXPIRATION DATE. This Act becomes ineffective on the date the attorney general certifies to the legislative council that the Federal Driver's Privacy Protection Act of 1994 [Pub. L. 103-322; 108 Stat. 2099; 18 USC 2721] has been declared unconstitutional by the United States Supreme Court or is otherwise void.

Approved April 8, 1997
Filed April 8, 1997

MUNICIPAL GOVERNMENT

CHAPTER 350

HOUSE BILL NO. 1230

(Representative Kretschmar)

CITY COUNCIL MEMBER ELECTION

AN ACT to amend and reenact section 40-08-04 of the North Dakota Century Code, relating to election of city council members.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-08-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-08-04. Election of council members. In cities containing six hundred inhabitants or less, the council members must be elected at large. ~~†~~ Except as provided in section 40-08-04.2, in all other cities operating under the council form of government, the council members must be elected by wards.

Approved March 5, 1997

Filed March 6, 1997

CHAPTER 351**HOUSE BILL NO. 1171**
(Representatives Wald, Wardner)
(Senator Goetz)**MUNICIPAL COURT CLERK SUPERVISION**

AN ACT to amend and reenact section 40-18-06.1 of the North Dakota Century Code, relating to municipal court clerks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-18-06.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-18-06.1. Municipal court clerk - Appointment - Salary - Authority. The governing body of a city, with the consent of its municipal judge, may appoint any qualified person to serve as municipal court clerk or deputy clerk for municipal ordinance violations. A municipal court clerk or deputy clerk is entitled to receive a salary as fixed by the governing body ~~and has that authority which may be assigned by a judge having jurisdiction over municipal ordinance cases of the city.~~ The municipal judge is responsible for the supervision of the municipal court clerk or deputy clerk when the clerk or deputy clerk is performing judicial or administrative functions on behalf of the municipal court. The municipal judge may assign responsibilities to the municipal court clerk or deputy clerk, including the administration of the office of the municipal court and the supervision of other personnel of that office. The supreme court may adopt rules for the qualifications of municipal court clerks and deputy clerks, the extent and assignment of authority by municipal ~~court~~ judges, and the conduct of the office, including rules for training sessions and for continuing education.

Approved March 5, 1997
Filed March 6, 1997

CHAPTER 352**SENATE BILL NO. 2092**

(Political Subdivisions Committee)
(At the request of the Secretary of State)

CITY BALLOT NAME ARRANGEMENT

AN ACT to amend and reenact section 40-21-08 of the North Dakota Century Code, relating to the arrangement of candidate names on city ballots.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-21-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-21-08. Ballots in municipalities - Arrangement. The auditor of the city shall place only the names of the persons nominated upon the ballot. The auditor shall arrange the offices upon the ballot in the order in which they are named in the statutes. The auditor shall determine the arrangement of the names of the candidates upon the ballot by ~~let in the presence of the candidates or their representatives at noon on the day~~ conducting a drawing within five days following the last day for the filing of the nomination papers. The city auditor shall set the date, time, and location for conducting the drawing and shall give advanced notice of the drawing to the candidates involved.

Approved March 6, 1997

Filed March 6, 1997

CHAPTER 353

SENATE BILL NO. 2379

(Senators Robinson, Nalewaja, St. Aubyn)
(Representatives Keiser, Poolman)

ENGINEER CONSTRUCTION SUPERVISION

AN ACT to amend and reenact sections 18-12-04, 40-28-03, and 61-35-102 of the North Dakota Century Code, relating to construction supervision by engineers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 18-12-04 of the North Dakota Century Code is amended and reenacted as follows:

18-12-04. Employment of registered architects and engineers. All plans and specifications for construction, except agricultural sheds and barns, the monetary worth of which is ~~twenty five~~ one hundred thousand dollars or more, must be prepared by and the construction administration and construction observation services supervised by architects or engineers registered in this state. The architect or engineer is legally responsible for designing the building in accordance with the provisions of this chapter of adequate strength so as to resist fire, and constructing the building in a workmanlike manner, according to the plans and specifications as approved. All projects where the tax money exceeds two thousand dollars must be submitted to the department of public instruction or the board of higher education for approval.

SECTION 2. AMENDMENT. Section 40-28-03 of the North Dakota Century Code is amended and reenacted as follows:

40-28-03. Municipality may contract work when property owner fails to make service connections as required. If the connection with the sewer, main, wire, or conduit is not made by the owner of the property within the time specified in the notice given by the city auditor, the governing body shall order such work done by such person as it may contract with therefor at the expense of the lot or parcel of land adjoining each improvement or service connection. Such work shall be ~~done~~ administered and observed under the supervision of the engineer acting for the municipality. The expense of making such connection, including the expense of giving all notices relating thereto, of making the assessments therefor, and of any other nature, shall be assessed by the engineer against the lot or parcel of land properly chargeable therewith, and the assessment list shall be filed in the office of the city auditor. The city auditor shall cause such list, together with a notice of the time when and place where the governing body will meet to consider the approval thereof, to be published in one issue of the official newspaper of the municipality at least ten days prior to the meeting of the governing body at which the approval of the assessment will be considered.

SECTION 3. AMENDMENT. Section 61-35-102 of the North Dakota Century Code is amended and reenacted as follows:

61-35-102. Conditions and terms. A contract let under this chapter requires the work to be done pursuant to the plans and specifications on file in the office of

the district, subject to the approval of the engineer acting for the district, and must provide:

1. That the board has the right to suspend the work at any time for improper construction and to relet the contract or to order a reconstruction of the work as to any part improperly done.
2. The time within which the work must be completed.
3. The period of time for which the work must be guaranteed as to workmanship and materials.
4. The fund from which the contract price is to be paid by the district.
5. That the consideration expressed in the contract is payable only in bonds drawn on the fund described in the contract.
6. That the district assumes and incurs no general liability under the contract.
7. That failure of the engineer to reject work and materials that are not up to specifications and acceptance of the job by the engineer does not release the contractor from liability for any failure on the contractor's part to perform work or furnish materials in accordance with the plans and specifications.

The engineer acting for the district shall ~~supervise and inspect~~ provide construction administration and observation of the work during its progress. In addition to any rights a district may have under its contract for construction of part or all of an improvement after a contract has been awarded and before work under the contract has been completed, a district, with the consent of the contractor and without advertising for bids, may order additional work done by that contractor of the same character as the work that was contracted for, whether within or without the improvement district for which the original contract was made, and upon the same terms and conditions specified in the original contract except as to time of performance, and at the same prices for the additional work; provided, that the total price payable to the contractor for the additional work may not exceed twenty percent of the amount estimated by the engineer for the district to be payable for that character of work under the original contract.

Approved April 1, 1997

Filed April 2, 1997

CHAPTER 354

SENATE BILL NO. 2384

(Senators Fischer, DeMers, Nalewaja)
(Representatives Clark, Galvin, Skarphol)

CITY EXTRATERRITORIAL ZONING AND REGULATION

AN ACT to amend and reenact sections 40-47-01.1 and 40-48-18 of the North Dakota Century Code, relating to extraterritorial zoning and subdivision regulation authority of cities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-47-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**40-47-01.1. Territorial authority of Extraterritorial zoning regulations -
Mediation - Determination by administrative law judge. Based upon the population
of the**

1. A city as determined by the last official regular or special federal census or, in case of a city incorporated subsequent to such census, a census taken in accordance with chapter 40-02, the governing body of a city may, by ordinance, extend the application of a city's zoning regulations to any quarter quarter section of unincorporated territory if a majority of the quarter quarter section is located within the following distance of the corporate limits of the city:

 1. a. To each quarter quarter section of unincorporated territory the majority of which is located within one-half ~~One~~ mile [~~.80~~ 1.61 kilometers] of its limits in any direction if it is a the city having has a population of less than five thousand.
 2. b. To each quarter quarter section of unincorporated territory the majority of which is located within one mile ~~Two~~ miles [4.64 ~~3.22~~ 6.44 kilometers] of its limits in any direction if it is a the city having has a population of five thousand or more, but less than twenty-five thousand.
 3. c. To each quarter quarter section of unincorporated territory the majority of which is located within two ~~Four~~ miles [~~3.22~~ 6.44 kilometers] of its limits in any direction if it is a the city having has a population of twenty-five thousand or more.
2. If a quarter quarter section line divides a platted lot and the majority of that platted lot lies within the quarter quarter section, a city may apply its extraterritorial zoning authority to the remainder of that platted lot. If the majority of the platted lot lies outside the quarter quarter section, the city may not apply its extraterritorial zoning authority to any of that platted lot.

3. Provided, that where ~~If~~ two or more noncontiguous cities have boundaries at a distance where there ~~would be~~ is an overlap of extraterritorial zoning authority under this section, each city is authorized to control the zoning of land on its side of a line established in proportion to the authority each city has to zone land outside its limits in accordance with this section or pursuant to mutual agreement. The governing body may thereafter enforce such regulation in the area to the same extent as if such property were situated within the city's corporate limits. This territorial authority shall not authorize the application of zoning regulations to territory outside the corporate limits of land attached to a city by a strip of land not more than one hundred feet [30.48 meters] wide, nor shall this territorial authority authorize application of zoning regulations to territory outside the corporate limits of land included within such a strip of land. the governing bodies of the cities may enter into an agreement regarding the extraterritorial zoning authority of each city. The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement or unless determined otherwise by an administrative law judge in accordance with this chapter. If a dispute arises concerning the extraterritorial zoning authority of a city and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.
4. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial zoning authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection 3 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed extraterritorial zoning, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective until the governing bodies of the cities agree to a change in the zoning authority of the cities. The governing body of a city may request a review of a decision of an administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:

- a. The proportional extraterritorial zoning authority of the cities involved in the dispute;
 - b. The proximity of the land in dispute to the corporate limits of each city involved;
 - c. The proximity of the land in dispute to developed property in the cities involved;
 - d. Whether any of the cities has exercised extraterritorial zoning authority over the disputed land;
 - e. Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;
 - f. The growth pattern of the cities involved in the dispute; and
 - g. Any other factor determined to be relevant by the administrative law judge.
5. For purposes of this section, the population of a city must be determined by the last official regular or special federal census. If a city has incorporated after a census, the population of the city must be determined by a census taken in accordance with chapter 40-22.
6. When a portion of the city is attached to the bulk of the city by a strip of land less than one-hundred feet wide, that portion and strip of land must be disregarded when determining the extraterritorial zoning limits of the city. This subsection does not affect the ability of a city to zone land within its city limits.
7. For the purposes of this section, a quarter quarter section shall be determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the phrase "quarter quarter section" refers to the equivalent government lot.

SECTION 2. AMENDMENT. Section 40-48-18 of the North Dakota Century Code is amended and reenacted as follows:

40-48-18. Jurisdiction of Extraterritorial subdivision regulation authority - Mediation - Determination by administrative law judge. ~~The territorial jurisdiction of any city planning commission over the subdivision or platting of land shall include all land located within the corporate limits of the city. Based upon the population of the city as determined by the last official regular or special federal census or, in case of a city incorporated subsequent to such census, a census taken in accordance with chapter 40-02, the governing body of a city may, by ordinance, extend the application of the city's subdivision regulations:~~

1. ~~To unincorporated territory located within one-half mile [.80 kilometer] of its limits in any direction if it is a city having a population of less than five thousand.~~
2. ~~To unincorporated territory located within one mile [1.61 kilometers] of its limits in any direction if it is a city having a population of five thousand or more, but less than twenty-five thousand.~~

3. ~~To unincorporated territory located within two miles [3.22 kilometers] of its limits in any direction if it is a city having a population of twenty-five thousand or more.~~

Provided, that where two or more noncontiguous cities have boundaries at a distance where there would be an overlap of subdivision regulation authority under this section, each city is authorized to control the subdivision of land on its side of a line established in proportion to the authority each city has to control the subdivision of land outside its limits in accordance with this section or pursuant to mutual agreement. The governing body may thereafter enforce such regulations in the area to the same extent as if such property were situated within the city's corporate limits.

1. A city may, by ordinance, extend its regulation of subdivisions beyond its corporate limits to the same extent as a city is authorized to extend its zoning authority under section 40-47-01.1.
2. If two or more cities have boundaries at a distance where there is an overlap of extraterritorial subdivision regulation authority under this section, the governing bodies of the cities may enter into an agreement regarding the extraterritorial subdivision regulation authority of each city. The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement or unless determined otherwise by an administrative law judge in accordance with this chapter. If a dispute arises concerning the extraterritorial subdivision regulation authority of a city, and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. The meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.
3. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial subdivision regulation authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection 2 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed subdivision regulation, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective until the governing bodies of the cities agree to a change in the subdivision regulation authority of the cities. The governing body of a city may request a review of a decision of an

administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:

- a. The proportional extraterritorial subdivision regulation authority of the cities involved in the dispute;
- b. The proximity of the land in dispute to the corporate limits of each city involved;
- c. The proximity of the land in dispute to developed property in the cities involved;
- d. Whether any of the cities has exercised extraterritorial subdivision regulation authority over the disputed land;
- e. Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;
- f. The growth pattern of the cities involved in the dispute; and
- g. Any other factor determined to be relevant by the administrative law judge.

Approved April 2, 1997

Filed April 3, 1997

CHAPTER 355

SENATE BILL NO. 2199

(Senators Holmberg, Lee)
(Representatives Froseth, Poolman)

ZONING AMENDMENT OR MODIFICATION APPROVAL

AN ACT to create and enact a new section to chapter 40-47 and a new section to chapter 40-48 of the North Dakota Century Code, relating to conditions for approval of an amendment or modification of a zoning regulation or approval of a plat.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 40-47 of the North Dakota Century Code is created and enacted as follows:

Agreements to not oppose annexation void. The zoning commission or governing body may not require as a condition of approval of a request to amend or modify a zoning regulation the execution of an agreement by the owner of the property requesting the amendment or modification stating that the owner will not oppose the annexation of the property by the municipality. This section does not apply to property located within one quarter mile of the municipality's corporate limits or to an agreement that contains a provision whereby the municipality agrees to provide a municipal service or services before the annexation. Any agreement entered in violation of this section is void.

SECTION 2. A new section to chapter 40-48 of the North Dakota Century Code is created and enacted as follows:

Agreements to not oppose annexation void. The planning commission or governing body may not require as a condition of approval of a request for approval of a plat the execution of an agreement by the owner of the property requesting the approval stating that the owner will not oppose the annexation of the property by the municipality. This section does not apply to property located within one quarter mile of the municipality's corporate limits or to an agreement that contains a provision whereby the municipality agrees to provide a municipal service or services before the annexation. Any agreement entered in violation of this section is void.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 356**HOUSE BILL NO. 1240**
(Representative Maragos)
(Senator Watne)**PARK DISTRICT PENSION PLANS**

AN ACT to amend and reenact sections 40-49-21, 40-49-22, and subsection 1 of section 57-15-12.2 of the North Dakota Century Code, relating to park district pension plans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-49-21 of the North Dakota Century Code is amended and reenacted as follows:

40-49-21. Park districts may provide for employees' pensions. ~~The A board of park commissioners of a park district in any city which has adopted an employees' pension system pursuant to the provisions of chapter 40-46, may, with the consent of the governing body of such city and the consent of not less than a majority of the city employees covered by the provisions of such chapter, provide for employees' pensions pursuant to such chapter 40-46, and payments an authorized city pension plan with the consent of the city governing body and the consent of not less than a majority of the city employees covered by the city pension plan. In addition, a board of park commissioners may provide for employer pensions pursuant to chapter 54-52, or under a program approved by the internal revenue service. Payments made by employees or taxes levied by such the park district shall must be paid into the employees' pension fund of such city, and the benefits provided for the employees of such park district shall be the same as provided for employees of such city. If a board of park commissioners wishes to leave an existing city pension plan, the board, upon the request of the pension fund governing body, shall fund an actuarial study of the financial impacts to the pension fund. Any losses or costs to the fund by the park district leaving the pension plan are the responsibility of the park district. A park district may not leave the city's pension plan without the approval of the pension fund governing body.~~

SECTION 2. AMENDMENT. Section 40-49-22 of the North Dakota Century Code is amended and reenacted as follows:

40-49-22. Tax levy for park district employees' pension fund. ~~Any A park district adopting the provisions of section 40-49-21 may levy a tax not exceeding the limitation in subsection 1 of section 57-15-12.2. The proceeds of the tax levy shall must be placed in the employees' pension fund of the city.~~

SECTION 3. AMENDMENT. Subsection 1 of section 57-15-12.2 of the North Dakota Century Code is amended and reenacted as follows:

1. A park district levying a tax for employees an employees' pension fund according to sections 40-49-21 and 40-49-22 may levy a tax not exceeding the ratio which the total amounts paid to the employees of the city per annum bears to the total amount of taxes levied by the city for such employees amount necessary for the district's annual contribution to the employees' pension fund.

Approved April 8, 1997

Filed April 8, 1997

CHAPTER 357**SENATE BILL NO. 2200**

(Senator Holmberg)
(Representatives Froseth, Poolman)

ANNEXATION AGREEMENTS AND MEDIATION

AN ACT to create and enact sections 40-51.2-02.1, 40-51.2-02.2, and 40-51.2-07.1 of the North Dakota Century Code, relating to annexation agreements, annexation of land in another city's extraterritorial zoning area, and the mediation of city annexations; to amend and reenact sections 40-51.2-05, 40-51.2-06, 40-51.2-07, 40-51.2-08, 40-51.2-09, 40-51.2-11, 40-51.2-12, 40-51.2-13, 40-51.2-14, 40-51.2-15, 40-51.2-16, and 40-51.2-17 of the North Dakota Century Code, relating to the annexation of property to a city; and to repeal section 40-51.2-10 of the North Dakota Century Code, relating to the composition of the annexation review commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 40-51.2-02.1 of the North Dakota Century Code is created and enacted as follows:

40-51.2-02.1. Annexation agreements. The governing body of a city may enter a written annexation agreement with the governing body of another city regarding the annexation of property located within the extraterritorial zoning or subdivision regulation authority of the cities under chapter 40-47 or 40-48. An agreement is binding on the governing bodies of the cities for the term of the agreement unless the governing bodies agree otherwise or unless determined otherwise by an administrative law judge in accordance with this chapter. An agreement may not have a term greater than twenty years.

SECTION 2. Section 40-51.2-02.2 of the North Dakota Century Code is created and enacted as follows:

40-51.2-02.2. Annexation of land in the extraterritorial zoning or subdivision regulation authority of another city. A city may not annex land located within the extraterritorial zoning or subdivision regulation authority of another city by ordinance or resolution unless:

1. Written consent is received from the governing body of the other city; or
2. The annexation is ordered by an administrative law judge in accordance with this chapter.

SECTION 3. AMENDMENT. Section 40-51.2-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-51.2-05. Notice - Petition of owners and electors - Mediation.

1. The governing body may not take final action on a petition presented by owners and qualified electors until the petitioners have given notice of presentation of ~~their~~ the petition by one publication in the official newspaper of the city as provided by section 40-01-09 and the governing

body has ~~caused~~ mailed a notice of the time and place of consideration of the petition ~~to be mailed~~ to the owner of each parcel of real property within the area described in the petition at the person's last known mailing address. ~~Said~~ The notice is not required to be sent to any owner of real property who signed a petition pursuant to section 40-51.2-03 or 40-51.2-04. If the land area petitioned to be annexed to the city lies within the extraterritorial zoning or subdivision regulation authority of another city, the governing body of the city must also mail the notice of the time and place of consideration of the petition to the governing body of the other city.

2. If the land area petitioned to be annexed to the city lies within the extraterritorial zoning or subdivision regulation authority of another city and written consent to annex the land area is not received from the governing body of the other city, the annexing city may either stop its pursuit of the annexation or submit the matter to a committee for mediation as provided in section 40-51.2-07.1. If mediation does not resolve the matter, the office of administrative hearings may be petitioned to hear the matter in accordance with sections 40-51.2-08, 40-51.2-09, 40-51.2-10, 40-51.2-11, 40-51.2-12, 40-51.2-13, 40-51.2-14, 40-51.2-15, 40-51.2-16, and 40-51.2-17.

SECTION 4. AMENDMENT. Section 40-51.2-06 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-06. Petition of owners and electors - Annexation or exclusion - Classification of annexed agricultural lands for tax purposes. ~~If the governing body determines to annex said~~ annexes the area, it shall do so by ordinance; ~~a. When a copy of which with the ordinance and an accurate map of the annexed area, certified by the executive officer of the municipality city, shall be are~~ are filed and recorded with the county register of deeds, ~~whereupon the annexation shall then be becomes~~ effective. Annexation shall be An annexion is effective for the purpose of general taxation on and after the first day of the next February next ensuing; provided, however. ~~However, the municipal corporation city shall continue to classify as agricultural lands for tax purposes all lands in the annexed area which were classified as agricultural lands immediately prior to such before the annexation proceedings until such those~~ lands are put to another use. If the governing body determines to exclude the area petitioned for, it may do so by ordinance adopted and recorded as in case of annexation.

SECTION 5. AMENDMENT. Section 40-51.2-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-51.2-07. Annexation by resolution of ~~municipal corporation~~ city. The governing body of any ~~municipality~~ city may adopt a resolution to annex contiguous or adjacent territory as follows:

1. The governing body of the ~~municipality~~ city shall adopt a resolution describing the property to be annexed.
2. The governing body of the ~~municipality~~ city shall ~~cause said~~ publish the resolution ~~together with~~ and a notice of the time and place ~~it the~~ the governing body will meet to hear and determine the sufficiency of any written protests against ~~such the~~ the proposed annexation ~~to be published~~ in the official newspaper once each week for two consecutive weeks. The governing body of the ~~municipality~~ city shall ~~cause~~ mail a notice ~~to be~~

~~mailed~~ to the owner of each parcel of real property within the area to be annexed at the person's last known mailing address. The notice must inform landowners of the resolution, the time and place of hearing, and the requirement that protests must be filed in writing. The owners of any real property within the territory proposed to be annexed within thirty days of the first publication of ~~such~~ the resolution may file written protests with the city auditor protesting against the proposed annexation. No state-owned property may be annexed without the written consent of the state agency or department having control ~~thereof~~ of the property. The governing body of the ~~municipality~~ city, at its next meeting after the expiration of the time for filing ~~such~~ the protests, shall hear and determine the sufficiency ~~thereof~~ of the protests.

3. In the absence of protests filed by the owners of more than one-fourth of the territory proposed to be annexed as of the date of the adoption of the resolution, the territory described in the resolution ~~must be included within and shall become~~ becomes a part of the city; ~~and~~ When a copy of the resolution ~~with and~~ and an accurate map of the annexed area, certified by the executive officer of the ~~municipality~~ city, ~~must be are~~ are filed and recorded with the county register of deeds, ~~whereupon the annexation shall become~~ becomes effective. Annexation is effective for the purpose of general taxation on and after the first day of ~~the next~~ February next ~~ensuing; provided, however~~ ensuing; ~~however~~ However, the ~~municipal corporation~~ city shall continue to classify as agricultural lands for tax purposes all lands in the annexed area which were classified as agricultural lands immediately ~~prior to such~~ before the annexation proceedings until ~~such~~ those lands are put to another use.

If the owners of one-fourth or more of the territory proposed to be annexed protest, or if a city that has extraterritorial zoning or subdivision regulation authority over the area petitioned to be annexed protests, the city may ~~seek annexation by petition to the annexation review commission~~ either stop its pursuit of the annexation or submit the matter to a committee for mediation as hereinafter provided in section 40-51.2-07.1.

SECTION 6. Section 40-51.2-07.1 of the North Dakota Century Code is created and enacted as follows:

40-51.2-07.1. Mediation. The mediation committee must be comprised of a person appointed by the governor, representatives of the petitioners under section 40-51.2-03 or the protesters under section 40-51.2-07, the involved cities, counties, and townships, and any other parties having an interest in the proposed annexation. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. The meeting may be continued until a resolution agreeable to all parties is reached or the mediator determines that continued mediation is no longer worthwhile.

SECTION 7. AMENDMENT. Section 40-51.2-08 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-08. Annexation by petition of municipal corporation Petition to office of administrating hearings. ~~The~~ If the governing body of any ~~municipal corporation~~ a city involved in the dispute is not satisfied with the result of the mediation, the governing body may petition the ~~attorney general for annexation of any territory contiguous or adjacent to it~~ director of the office of administrative hearings to hear the matter. ~~The~~ If the annexation was initiated under section 40-51.2-07, the petition

~~shall set forth~~ must include an accurate map of the area sought to be annexed, ~~its~~ a description of the area, and the reasons for ~~its~~ the annexation.

SECTION 8. AMENDMENT. Section 40-51.2-09 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-09. ~~Annexation review commission~~ Administrative law judge to be constituted appointed - Hearing set. Upon receipt of ~~such a~~ such a petition, the ~~attorney general~~ director of the office of administrative hearings shall ~~issue an order to constitute an annexation review commission~~ appoint an administrative law judge to hear ~~such the~~ the petition ~~and he~~. If the annexation was initiated under section 40-51.2-07, the administrative law judge shall determine whether the annexing city has substantially complied with all of the procedural requirements in the annexation process. If substantial compliance has been met, or if the annexation was initiated under section 40-51.2-03, the administrative law judge shall designate a time and place at which the commission shall meet to consider the petition will be heard. The time of ~~such the~~ such the hearing shall be may not be less than thirty days after receipt of ~~such the~~ such the petition.

SECTION 9. AMENDMENT. Section 40-51.2-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-51.2-11. Notice required. At the time ~~he~~ the administrative law judge sets the time and place of hearing, the ~~chairman of such commission~~ administrative law judge shall direct the governing body of the annexing municipality city to ~~cause~~:

1. Publish a notice of such the hearing and a copy of its the petition to be published, if the annexation was initiated under section 40-51.2-07, at least once a week for two successive weeks in the official newspaper of such municipal corporation, to mail the city;
2. Mail a notice of the hearing and a copy of its the petition, if the annexation was initiated under section 40-51.2-07, to the owner of each parcel of real property in the area to be annexed at the person's last known mailing address; and to serve;
3. Serve a copy of such the notice and petition upon the chairman of the governing body of the county and township, if organized, wherein in which the territory to be annexed lies; and
4. Serve a copy of the notice and petition upon the head of the governing body of any other city in whose extraterritorial zoning or subdivision regulation authority the land area petitioned to be annexed is located.

~~Such~~ The hearing must be held not less than thirty days after the first publication of ~~such the~~ the notice. Proof of publication and service of the notice and petition ~~as required herein~~ must be filed with the ~~chairman of such commission~~ administrative law judge ~~prior to~~ before the time of ~~such the~~ such the hearing.

SECTION 10. AMENDMENT. Section 40-51.2-12 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-12. ~~Annexation review commission~~ Administrative law judge - Hearing. At the time of the hearing the ~~commission~~ administrative law judge shall hear all evidence with respect to ~~such the~~ such the annexation and ~~it~~ shall consider all studies, surveys, maps, data, reports, and other material prepared by any state or local

governmental subdivision; or planning or zoning commission ~~in the performance of their functions~~. At the hearing, the governor's appointee who mediated the meetings under section 40-51.2-07.1 shall provide information to the administrative law judge on the proposed annexation and any proposed resolutions or recommendations made by a majority of the representatives of the interested parties. Any resident of or person owning property or having any interest in the area proposed to be annexed and any elector of the annexing municipality city, or his representatives a representative of any such person, may appear at ~~such the~~ hearing and present evidence upon any matter to be determined by the ~~commission~~ administrative law judge. All proceedings at the hearing ~~and any continuances thereof shall~~ must be recorded but the same need not be transcribed unless proceedings for judicial review are initiated as provided in section 40-51.2-15.

SECTION 11. AMENDMENT. Section 40-51.2-13 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-13. Decision. ~~Upon the completion of the hearing~~

1. In arriving at a decision, the ~~commission~~ administrative law judge shall determine if the annexation should be granted after considering and finding that from the evidence one or more of consider the following factors are present with respect to the proposed annexation which will constitute a more harmonious and compatible metropolitan community:
 4. a. The present ~~uses~~ and ~~planned~~ future uses or development of the area sought to be annexed;
 2. b. Whether a ~~community of interest exists between~~ the area sought to be annexed ~~and is a part of the community~~ of the annexing ~~municipality~~ city;
 3. c. The educational, recreational, civic, social, religious, industrial, commercial, or ~~municipal~~ city facilities and services made available by or in the annexing ~~municipality~~ city to any resident, business, industry, or employee of ~~such the~~ business or industry located in the area sought to be annexed;
 4. d. Whether any governmental services or facilities of the annexing ~~municipality~~ city are or can be made available to the area sought to be annexed;
 5. e. The economic, physical, and social relationship of the inhabitants, businesses, or industries of the area sought to be annexed to the annexing ~~municipal corporation~~ city, and to the school districts and other political subdivisions affected ~~thereby~~;
 - f. The economic impact of the proposed annexation on the property owners in the area of the proposed annexation, and the economic impact on the annexing city of a decision to deny the annexation;
 - g. Whether the area proposed to be annexed is in the extraterritorial zoning or subdivision regulation authority of another city; and
 - h. Any other factor determined to be relevant by the administrative law judge.

2. a. Based upon those factors, the administrative law judge may order the annexation if the administrative law judge finds that:
- (1) The area proposed to be annexed is now, or is about to become, urban in character;
 - (2) City government in the area proposed to be annexed is required to protect the public health, safety, and welfare; or
 - (3) The annexation would be in the best interest of the area proposed to be annexed.
- b. The administrative law judge may deny the annexation if it appears that annexation of all or a part of the property to a different city would better serve the interests of the residents of the property.
3. If a majority of the ~~commission~~ administrative law judge is satisfied that the annexation should be granted, ~~it~~ the administrative law judge shall determine the terms and conditions upon which of the annexation is to be had and shall enter an order granting the petition. In all cases, the ~~commission~~ administrative law judge shall set forth in writing its a decision, including findings of fact, its conclusions based thereon of law, and its decision, and an order. The decision must include the factors upon which the decision is based. The administrative law judge shall direct the governing body of the annexing city to mail a copy thereof of the decision to all parties to the annexation proceedings.
4. The An order granting the petition shall set forth must include in detail all such the terms and conditions upon which the petition is granted and the effective date thereof of the petition. Such The annexing city shall file and record the order together with and an accurate map of the annexed area, certified by the executive officer of the municipality city, shall be filed and recorded in the office of the register of deeds of the county wherein in which the annexed territory is situated.

SECTION 12. AMENDMENT. Section 40-51.2-14 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-14. Powers of the ~~commission~~ administrative law judge - Decision - Terms. The ~~commission~~ in making its decision shall balance the equities presented by the evidence and administrative law judge shall enter an order setting forth what ~~it~~ the administrative law judge deems to be fair and reasonable terms and conditions and shall direct the annexation in conformity therewith with those terms and conditions. ~~It shall have power~~ The administrative law judge may:

1. ~~To approve~~ Approve or disapprove, with or without amendment, wholly, partially, or conditionally the petition for annexation.
2. ~~To determine~~ Determine the metes and bounds of the territory to be annexed and may include the same area or a smaller area than that described in the petition.
3. ~~To require~~ Require payment by the ~~municipal corporation~~ city of a sum determined by the ~~commission~~ administrative law judge payable to compensate for the value of public improvements acquired by the annexation proceedings and to require the assumption by the ~~municipal~~

~~corporation~~ city of a pro rata share of any existing bonded indebtedness of any township from which territory is annexed.

4. Require payment by the city of a sum determined by the administrative law judge payable to compensate a water district for losses resulting from the annexation in accordance with section 61-35-26.

SECTION 13. AMENDMENT. Section 40-51.2-15 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-15. Review of determination of ~~commission~~ administrative law judge by certiorari. Within thirty days after receipt of the ~~commission's~~ administrative law judge's order, any interested party dissatisfied with the decision ~~made by the annexation review commission~~ may ~~make an application~~ apply to the district court for a writ of certiorari. The review upon ~~such~~ the writ ~~shall~~ may extend only to the determination of whether ~~such commission~~ the administrative law judge has ~~pursued its authority~~ acted regularly and has not exceeded ~~its~~ the administrative law judge's jurisdiction or abused ~~its~~ the administrative law judge's discretion under the provisions of this chapter.

SECTION 14. AMENDMENT. Section 40-51.2-16 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-16. Effective date of annexation by ~~annexation review commission~~ administrative law judge - Classification of annexed agricultural lands for tax purposes. Territory annexed to a ~~municipality~~ under the provisions of this chapter, ~~relating city pursuant to petition to annexation review commission~~ the director of the office of administrative hearings, ~~shall be is~~ annexed as of the date of the order of the ~~commission~~ administrative law judge, except for tax purposes, and a copy of the resolution with an accurate map of the annexed area, certified by the executive officer of the ~~municipality~~ city, ~~shall~~ must be filed and recorded with the county register of deeds. Annexation ~~shall be is~~ effective for the purpose of general taxation on and after the first day of the next February ~~next ensuing; provided, however, However,~~ the ~~municipal corporation~~ city shall continue to classify as agricultural lands for tax purposes all lands in the annexed area which were classified as agricultural lands immediately ~~prior to such~~ before the annexation proceedings until ~~such~~ those lands are put to another use.

SECTION 15. AMENDMENT. Section 40-51.2-17 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-17. Cost of annexation. The costs of the annexation proceedings ~~shall~~, and the costs for services rendered by an administrative law judge, must be paid to the office of administrative hearings by the ~~municipal corporation~~ instituting the proceeding and ~~shall be~~ annexing city. The costs of the annexation proceedings are the same as those allowed in any civil action.

SECTION 16. REPEAL. Section 40-51.2-10 of the North Dakota Century Code is repealed.

Approved April 2, 1997
Filed April 3, 1997

UNIFORM COMMERCIAL CODE

CHAPTER 358

SENATE BILL NO. 2098

(Judiciary Committee)

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

LETTERS OF CREDIT

AN ACT to create and enact chapter 41-05 and a new subsection to section 41-09-04 of the North Dakota Century Code, relating to the Uniform Commercial Code revised article 5 pertaining to letters of credit; to amend and reenact subsection 2 of section 41-01-05, subsection 1 of section 41-02-60, subsection 1 of section 41-09-03, subsection 3 of section 41-09-05, sections 41-09-06, 41-09-25, and 41-09-26 of the North Dakota Century Code, relating to adoption of the revised article 5; and to repeal the present chapter 41-05 of the North Dakota Century Code, relating to the Uniform Commercial Code revised article 5 pertaining to letters of credit.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ **SECTION 1. AMENDMENT.** Subsection 2 of section 41-01-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Where one of the following provisions of this title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:
 - a. Rights of creditors against sold goods. Section 41-02-47.
 - b. Applicability of the chapter on leases. Sections 41-02.1-05 and 41-02.1-06.
 - c. Applicability of the chapter on bank deposits and collections. Section 41-04-02.
 - d. Governing law in the chapter on funds transfers. Section 41-04.1-38.
 - e. Letters of credit. Section 41-05-16.
 - f. Applicability of the chapter on investment securities. Section 41-08-06.

¹ Section 41-01-05 was also amended by section 3 of Senate Bill No. 2099, chapter 362.

- f. g. Perfection provisions of the chapter on secured transactions. Section 41-09-03.

SECTION 2. AMENDMENT. Subsection 1 of section 41-02-60 of the North Dakota Century Code is amended and reenacted as follows:

1. Where the contract requires payment before inspection nonconformity of the goods does not excuse the buyer from so making payment unless:
 - a. The nonconformity appears without inspection; or
 - b. Despite tender of the required documents the circumstances would justify injunction against honor under ~~the provisions of~~ this title (section ~~41-05-14~~ 41-05-09).

² **SECTION 3.** Chapter 41-05 of the North Dakota Century Code is created and enacted as follows:

41-05-01. (5-101) Short title. This chapter may be cited as the Uniform Commercial Code - Letters of Credit.

41-05-02. (5-102) Definitions.

1. In this chapter:

- a. "Adviser" means a person who, at the request of the issuer, a confirmer, or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended.
- b. "Applicant" means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer.
- c. "Beneficiary" means a person who under the terms of a letter of credit is entitled to have its complying presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit.
- d. "Confirmer" means a nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another.
- e. "Dishonor" of a letter of credit means failure timely to honor or to take an interim action, such as acceptance of a draft, that may be required by the letter of credit.

² Section 41-05-14 was also amended by section 6 of Senate Bill No. 2099, chapter 362.

- f. "Document" means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion:
- (1) Which is presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in subsection 1 of section 41-05-08; and
 - (2) Which is capable of being examined for compliance with the terms and conditions of the letter of credit. A document may not be oral.
- g. "Good faith" means honesty in fact in the conduct or transaction concerned.
- h. "Honor" of a letter of credit means performance of the issuer's undertaking in the letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise provides, "honor" occurs:
- (1) Upon payment;
 - (2) If the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment; or
 - (3) If the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance.
- i. "Issuer" means a bank or other person that issues a letter of credit, but does not include an individual who makes an engagement for personal, family, or household purposes.
- j. "Letter of credit" means a definite undertaking that satisfies the requirements of section 41-05-04 by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value.
- k. "Nominated person" means a person whom the issuer:
- (1) Designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit; and
 - (2) Undertakes by agreement or custom and practice to reimburse.
- l. "Presentation" means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit.
- m. "Presenter" means a person making a presentation as or on behalf of a beneficiary or nominated person.

- n. "Record" means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium and is retrievable in perceivable form.
 - o. "Successor of a beneficiary" means a person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor in possession, liquidator, and receiver.
- 2. Definitions in other chapters applying to this chapter and the sections in which they appear are:
 - a. "Accept" or "Acceptance". Section 41-03-46.
 - b. "Value". Sections 41-03-29 and 41-04-23.
 - 3. Chapter 41-01 contains certain additional general definitions and principles of construction and interpretation applicable throughout this chapter.

41-05-03. (5-103) Scope.

- 1. This chapter applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.
- 2. The statement of a rule in this chapter does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this chapter.
- 3. With the exception of this subsection, subsections 1 and 4 of this section, subdivisions i and j of subsection 1 of section 41-05-02, subsection 4 of section 41-05-06, and subsection 4 of section 41-05-14, and except to the extent prohibited in subsection 3 of section 41-01-02 and subsection 4 of section 41-05-17, the effect of this chapter may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this chapter.
- 4. Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

41-05-04. (5-104) Formal requirements. A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated:

- 1. By a signature; or
- 2. In accordance with the agreement of the parties or the standard practice referred to in subsection 5 of section 41-05-08.

41-05-05. (5-105) Consideration. Consideration is not required to issue, amend, transfer, or cancel a letter of credit, advice, or confirmation.

41-05-06. (5-106) Issuance - Amendment - Cancellation - Duration.

1. A letter of credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it so provides.
2. After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that person has not consented except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent.
3. If there is no stated expiration date or other provision that determines its duration, a letter of credit expires one year after its stated date of issuance or, if none is stated, after the date on which it is issued.
4. A letter of credit that states that it is perpetual expires five years after its stated date of issuance, or if none is stated, after the date on which it is issued.

41-05-07. (5-107) Confirmer - Nominated person - Adviser.

1. A confirmer is directly obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an applicant and the confirmer had issued the letter of credit at the request and for the account of the issuer.
2. A nominated person who is not a confirmer is not obligated to honor or otherwise give value for a presentation.
3. A person requested to advise may decline to act as an adviser. An adviser that is not a confirmer is not obligated to honor or give value for a presentation. An adviser undertakes to the issuer and to the beneficiary accurately to advise the terms of the letter of credit, confirmation, amendment, or advice received by that person and undertakes to the beneficiary to check the apparent authenticity of the request to advise. Even if the advice is inaccurate, the letter of credit, confirmation, or amendment is enforceable as issued.
4. A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation, amendment, or advice has the rights and obligations of an adviser under subsection 3. The terms in the notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who so notifies.

41-05-08. (5-108) Issuer's rights and obligations.

1. Except as otherwise provided in section 41-05-09, an issuer shall honor a presentation that, as determined by the standard practice referred to in

- subsection 5, appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in section 41-05-13 and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.
2. An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the day of its receipt of documents:
 - a. To honor;
 - b. If the letter of credit provides for honor to be completed more than seven business days after presentation, to accept a draft or incur a deferred obligation; or
 - c. To give notice to the presenter of discrepancies in the presentation.
 3. Except as otherwise provided in subsection 4, an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if timely notice is given.
 4. Failure to give the notice specified in subsection 2 or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery as described in subsection 1 of section 41-05-09 or expiration of the letter of credit before presentation.
 5. An issuer shall observe the standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.
 6. An issuer is not responsible for:
 - a. The performance or nonperformance of the underlying contract, arrangement, or transaction;
 - b. An act or omission of others; or
 - c. Observance or knowledge of the usage of a particular trade other than the standard practice referred to in subsection 5.
 7. If an undertaking constituting a letter of credit under subdivision j of subsection 1 of section 41-05-02 contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.
 8. An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.
 9. An issuer that has honored a presentation as permitted or required by this chapter:

- a. Is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds;
- b. Takes the documents free of claims of the beneficiary or presenter;
- c. Is precluded from asserting a right of recourse on a draft under sections 41-03-51 and 41-03-52;
- d. Except as otherwise provided in sections 41-05-10 and 41-05-17, is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender which are apparent on the face of the presentation; and
- e. Is discharged to the extent of its performance under the letter of credit unless the issuer honored a presentation in which a required signature of a beneficiary was forged.

41-05-09. (5-109) Fraud - Forgery.

1. If a presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant:
 - a. The issuer shall honor the presentation, if honor is demanded by:
 - (1) A nominated person who has given value in good faith and without notice of forgery or material fraud;
 - (2) A confirmer who has honored its confirmation in good faith;
 - (3) A holder in due course of a draft drawn under the letter of credit which was taken after acceptance by the issuer or nominated person; or
 - (4) An assignee of the issuer's or nominated person's deferred obligation that was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person; and
 - b. The issuer, acting in good faith, may honor or dishonor the presentation in any other case.
2. If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction, temporarily or permanently, may enjoin the issuer from honoring a presentation or may grant similar relief against the issuer or other persons only if the court finds that:
 - a. The relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer;

- b. A beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;
- c. All of the conditions to entitle a person to the relief under the law of this state have been met; and
- d. On the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for protection under subdivision a of subsection 1.

41-05-10. (5-110) Warranties.

1. If its presentation is honored, the beneficiary warrants:
 - a. To the issuer, any other person to whom presentation is made, and the applicant that there is no fraud or forgery of the kind described in subsection 1 of section 41-05-09; and
 - b. To the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit.
2. The warranties in subsection 1 are in addition to warranties arising under chapters 41-03, 41-04, 41-07, and 41-08 because of the presentation or transfer of documents covered by any of those chapters.

41-05-11. (5-111) Remedies.

1. If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or nominated person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer has the burden of proving the amount of damages avoided. In the case of repudiation the claimant need not present any document.
2. If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach.
3. If an adviser or nominated person other than a confirmer breaches an obligation under this chapter or an issuer breaches an obligation not covered in subsection 1 or 2, a person to whom the obligation is owed may recover damages resulting from the breach, including incidental but

not consequential damages, less any amount saved as a result of the breach. To the extent of the confirmation, a confirmer has the liability of an issuer specified in this subsection and subsections 1 and 2.

4. An issuer, nominated person, or adviser who is found liable under subsection 1, 2, or 3 shall pay interest on the amount owed thereunder from the date of wrongful dishonor or other appropriate date.
5. Reasonable attorney's fees and other expenses of litigation must be awarded to the prevailing party in an action in which a remedy is sought under this chapter.
6. Damages that would otherwise be payable by a party for breach of an obligation under this chapter may be liquidated by agreement or undertaking, but only in an amount or by a formula that is reasonable in light of the harm anticipated.

41-05-12. (5-112) Transfer of letter of credit.

1. Except as otherwise provided in section 41-05-13, unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or otherwise demand performance under a letter of credit may not be transferred.
2. Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or carry out a transfer if:
 - a. The transfer would violate applicable law; or
 - b. The transferor or transferee has failed to comply with any requirement stated in the letter of credit or any other requirement relating to transfer imposed by the issuer which is within the standard practice referred to in subsection 5 of section 41-05-08 or is otherwise reasonable under the circumstances.

41-05-13. (5-113) Transfer by operation of law.

1. A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.
2. A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in subsection 5, an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice referred to in subsection 5 of section 41-05-08 or, in the absence of such a practice, compliance with other reasonable procedures sufficient to protect the issuer.
3. An issuer is not obliged to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.

4. Honor of a purported successor's apparently complying presentation under subsection 1 or 2 has the consequences specified in subsection 9 of section 41-05-08 even if the purported successor is not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes of section 41-05-09.
5. An issuer whose rights of reimbursement are not covered by subsection 4 or substantially similar law and any confirmer or nominated person may decline to recognize a presentation under subsection 2.
6. A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obligations as a successor of a beneficiary under this section.

41-05-14. (5-114) Assignment of proceeds.

1. In this section, "proceeds of a letter of credit" means the cash, check, accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit. The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.
2. A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The beneficiary may do so before presentation as a present assignment of its right to receive proceeds contingent upon its compliance with the terms and conditions of the letter of credit.
3. An issuer or nominated person need not recognize an assignment of proceeds of a letter of credit until it consents to the assignment.
4. An issuer or nominated person has no obligation to give or withhold its consent to an assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the assignee possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.
5. Rights of a transferee beneficiary or nominated person are independent of the beneficiary's assignment of the proceeds of a letter of credit and are superior to the assignee's right to the proceeds.
6. Neither the rights recognized by this section between an assignee and an issuer, transferee beneficiary, or nominated person nor the issuer's or nominated person's payment of proceeds to an assignee or a third person affect the rights between the assignee and any person other than the issuer, transferee beneficiary, or nominated person. The mode of creating and perfecting a security interest in or granting an assignment of a beneficiary's rights to proceeds is governed by chapter 41-09 or other law. Against persons other than the issuer, transferee beneficiary, or nominated person, the rights and obligations arising upon the creation of a security interest or other assignment of a beneficiary's right to proceeds and its perfection are governed by chapter 41-09 or other law.

41-05-15. (5-115) Statute of limitations. An action to enforce a right or obligation arising under this chapter must be commenced within one year after the expiration date of the relevant letter of credit or one year after the claim for relief accrues, whichever occurs later. A claim for relief accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.

41-05-16. (5-116) Choice of law and forum.

1. The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in section 41-05-04 or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.
2. Unless subsection 1 applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.
3. Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the uniform customs and practice for documentary credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If:
 - a. This chapter would govern the liability of an issuer, nominated person, or adviser under subsection 1 or 2;
 - b. The relevant undertaking incorporates rules of custom or practice; and
 - c. There is conflict between this chapter and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in subsection 3 of section 41-05-03.
4. If there is conflict between this chapter and chapter 41-03, 41-04, 41-04.1, or 41-09, this chapter governs.
5. The forum for settling disputes arising out of an undertaking within this chapter may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection 1.

41-05-17. (5-117) Subrogation of issuer, applicant, and nominated person.

1. An issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same extent as if the issuer were a

- secondary obligor of the underlying obligation owed to the beneficiary and of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.
2. An applicant that reimburses an issuer is subrogated to the rights of the issuer against any beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights of the beneficiary stated in subsection 1.
 3. A nominated person who pays or gives value against a draft or demand presented under a letter of credit is subrogated to the rights of:
 - a. The issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant;
 - b. The beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary; and
 - c. The applicant to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.
 4. Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in subsections 1 and 2 do not arise until the issuer honors the letter of credit or otherwise pays and the rights in subsection 3 do not arise until the nominated person pays or otherwise gives value. Until then, the issuer, nominated person, and the applicant do not derive under this section present or prospective rights forming the basis of a claim, defense, or excuse.

³ **SECTION 4. AMENDMENT.** Subsection 1 of section 41-09-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Documents, instruments, letters of credit, and ordinary goods:
 - a. This subsection applies to documents ~~and~~, instruments, rights to proceeds of written letters of credit, and ~~to~~ goods other than those covered by a certificate of title described in subsection 2, mobile goods described in subsection 3, and minerals described in subsection 5.
 - b. Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

³ Section 41-09-03 was also amended by section 8 of Senate Bill No. 2099, chapter 362.

- c. If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until thirty days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the thirty-day period.
- d. When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by part 3 of this chapter to perfect the security interest:
 - (1) If the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal.
 - (2) If the action is taken before the expiration of the period specified in paragraph 1, the security interest continues perfected thereafter.
 - (3) For the purpose of priority over a buyer of consumer goods (subsection 2 of section 41-09-28), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in paragraphs 1 and 2.

SECTION 5. A new subsection to section 41-09-04 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

To a transfer of an interest in a letter of credit other than the rights to proceeds of a written letter of credit.

⁴ **SECTION 6. AMENDMENT.** Subsection 3 of section 41-09-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The following definitions in other chapters apply to this chapter:
 - a. "Check". Section 41-03-04.
 - b. "Contract for sale". Section 41-02-06.

⁴ Section 41-09-05 was also amended by section 1 of Senate Bill No. 2142, chapter 360, and section 9 of Senate Bill No. 2099, chapter 362.

- c. "Holder in due course". Section 41-03-28.
- d. "Letter of credit". Section 41-05-02.
- e. "Note". Section 41-03-04.
- e- f. "Sale". Section 41-02-06.

⁵ **SECTION 7. AMENDMENT.** Section 41-09-06 of the North Dakota Century Code is amended and reenacted as follows:

41-09-06. (9-106) "Account" and "general intangibles" defined. "Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper whether or not it has been earned by performance. "General intangibles" means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, rights to proceeds of written letters of credit, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts.

⁶ **SECTION 8. AMENDMENT.** Section 41-09-25 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-09-25. (9-304) Perfection of security interest in instruments, documents, proceeds of a written letter of credit, and goods covered by documents - Perfection by permissive filing - Temporary perfection without filing or transfer of possession.

1. A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in the rights to proceeds of a written letter of credit can be perfected only by the secured party's taking possession of the letter of credit. A security interest in money or instruments, other than certificated securities or instruments that constitute part of chattel paper, can be perfected only by the secured party's taking possession, except as provided in subsections 4 and 5 of this section and subsections 2 and 3 of section 41-09-27.
2. During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during that period is subject thereto.
3. A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

⁵ Section 41-09-06 was also amended by section 10 of Senate Bill No. 2099, chapter 362.

⁶ Section 41-09-25 was also amended by section 2 of Senate Bill No. 2142, chapter 360, and section 18 of Senate Bill No. 2099, chapter 362.

4. A security interest in a negotiable document or an instrument other than a certificated security is perfected without filing or the taking of possession for a period of twenty-one days after it attaches to the extent that it arises for new value given under a written security agreement.
5. A security interest remains perfected for a period of twenty-one days without filing if a secured party having a perfected security interest in a negotiable document, an instrument other than a certificated security, or goods in possession of a bailee other than one who has issued a negotiable document therefor:
 - a. Makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to subsection 3 of section 41-09-33; or
 - b. Delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal, or registration of transfer.
6. After the twenty-one-day period in subsections 4 and 5, perfection depends upon compliance with applicable provisions of this chapter.

⁷ **SECTION 9. AMENDMENT.** Section 41-09-26 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-09-26. (9-305) When possession by secured party perfects security interest without filing. A security interest ~~in letters of credit and advices of credit (subdivision a of subsection 2 of section 41-05-16)~~, goods, instruments other than certificated securities, money, negotiable documents, or chattel paper may be perfected by the secured party's taking possession of the collateral. A security interest in the right to proceeds of a written letter of credit may be perfected by the secured party's taking possession of the letter of credit. If the collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this chapter. The security interest may be otherwise perfected as provided in this chapter before or after the period of possession by the secured party.

SECTION 10. REPEAL. Chapter 41-05 of the North Dakota Century Code is repealed.

Approved March 20, 1997
Filed March 20, 1997

⁷ Section 41-09-26 was also amended by section 3 of Senate Bill No. 2142, chapter 360, and section 19 of Senate Bill No. 2099, chapter 362.

CHAPTER 359

SENATE BILL NO. 2171 (Senators Traynor, Krebsbach, Redlin) (Representatives Berg, Nicholas)

UNAUTHORIZED DEMAND DRAFT PAYMENT LIABILITY

AN ACT to amend and reenact sections 41-03-03, 41-03-04, 41-03-53, 41-03-54, 41-04-19, and 41-04-20 of the North Dakota Century Code, relating to the liability for paying an unauthorized demand draft.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 41-03-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-03-03. (3-103) Definitions.

1. In this chapter:
 - a. "Acceptor" means a drawee that has accepted a draft.
 - b. "Drawee" means a person ordered in a draft to make payment.
 - c. "Drawer" means a person ~~that~~ who signs or is identified in a draft as a person ordering payment.
 - d. "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.
 - e. "Maker" means a person ~~that~~ who signs or is identified in a note as promisor of payment.
 - f. "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.
 - g. "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards prevailing in the area in which that person is located with respect to the business in which that person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this chapter or chapter 41-04.

- h. "Party" means a party to an instrument.
 - i. "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.
 - j. "Prove" with respect to a fact means to meet the burden of establishing the fact (subsection 8 of section 41-01-11).
 - k. "Remitter" means a person ~~that~~ who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.
2. Other definitions applying to this chapter and the sections in which they appear are:
- a. "Acceptance". Section 41-03-46.
 - b. "Accommodated party". Section 41-03-56.
 - c. "Accommodation party". Section 41-03-56.
 - d. "Alteration". Section 41-03-44.
 - e. "Anomalous endorsement". Section 41-03-24.
 - f. "Blank endorsement". Section 41-03-24.
 - g. "Cashier's check". Section 41-03-04.
 - h. "Certificate of deposit". Section 41-03-04.
 - i. "Certified check". Section 41-03-46.
 - j. "Check". Section 41-03-04.
 - k. "Consideration". Section 41-03-29.
 - l. ~~"Draft"~~ "Demand draft". Section 41-03-04.
 - m. "Draft". Section 41-03-04.
 - n. "Endorsement". Section 41-03-23.
 - ~~n.~~ o. "Endorser". Section 41-03-23.
 - ~~o.~~ p. "Fiduciary". Section 41-03-33.
 - ~~p.~~ q. "Holder in due course". Section 41-03-28.
 - ~~q.~~ r. "Incomplete instrument". Section 41-03-15.
 - ~~r.~~ s. "Instrument". Section 41-03-04.
 - ~~s.~~ t. "Issue". Section 41-03-05.

- ~~t~~ u. "Issuer". Section 41-03-05.
 - ~~u~~ v. "Negotiable instrument". Section 41-03-04.
 - ~~v~~ w. "Negotiation". Section 41-03-20.
 - ~~w~~ x. "Note". Section 41-03-04.
 - ~~x~~ y. "Payable at a definite time". Section 41-03-08.
 - ~~y~~ z. "Payable on demand". Section 41-03-08.
 - ~~z~~ aa. "Payable to bearer". Section 41-03-09.
 - ~~aa~~ bb. "Payable to order". Section 41-03-09.
 - ~~bb~~ cc. "Payment". Section 41-03-64.
 - ~~cc~~ dd. "Person entitled to enforce". Section 41-03-27.
 - ~~dd~~ ee. "Presentment". Section 41-03-58.
 - ~~ee~~ ff. "Reacquisition". Section 41-03-26.
 - ~~ff~~ gg. "Represented person". Section 41-03-33.
 - ~~gg~~ hh. "Special endorsement". Section 41-03-24.
 - ~~hh~~ ii. "Teller's check". Section 41-03-04.
 - ~~ii~~ jj. "Transfer of instrument". Section 41-03-22.
 - ~~jj~~ kk. "Traveler's check". Section 41-03-04.
 - ~~kk~~ ll. "Value". Section 41-03-29.
3. The following definitions in other chapters apply to this chapter:
- a. "Bank". Section 41-04-05.
 - b. "Banking day". Section 41-04-04.
 - c. "Clearinghouse". Section 41-04-04.
 - d. "Collecting bank". Section 41-04-05.
 - e. "Customer". Section 41-04-04.
 - f. "Depository bank". Section 41-04-05.
 - g. "Documentary draft". Section 41-04-04.
 - h. "Intermediary bank". Section 41-04-05.
 - i. "Item". Section 41-04-04.

- j. "Payor bank". Section 41-04-05.
 - k. "Suspends payments". Section 41-04-04.
4. In addition, chapter 41-01 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

SECTION 2. AMENDMENT. Section 41-03-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-03-04. (3-104) Negotiable instrument.

1. "Negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:
 - a. Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
 - b. Is payable on demand or at a definite time; and
 - c. Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, except that the promise or order may contain an undertaking or power to give, maintain, or protect collateral to secure payment, an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or a waiver of the benefit of any law intended for the advantage or protection of any obligor.
2. "Instrument" means a negotiable instrument.
3. An order that meets all of the requirements of subsection 1 except subdivision a and otherwise falls within the definition of "check" in subsection 6 is a negotiable instrument and a check.
4. Notwithstanding subsection 1, a promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this chapter.
5. An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft", the person entitled to enforce the instrument may treat it as either.
6. "Check" means a draft, other than a documentary draft, payable on demand and drawn on a bank or a cashier's check ~~or~~, teller's check, or demand draft. An instrument may be a check even though it is described on its face by another term such as "money order".
7. "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

8. "Teller's check" means a draft drawn by a bank on another bank or payable at or through a bank.
9. "Traveler's check" means an instrument that is payable on demand, is drawn on or payable at or through a bank, is designated by the term "traveler's check" or by a substantially similar term, and requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.
10. "Certificate of deposit" means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.
11. "Demand draft" means a writing not signed by a customer that is created by a third party under the purported authority of the customer for the purpose of charging the customer's account with a bank. A demand draft must contain the customer's account number and may contain any or all of the following:
 - a. The customer's printed or typewritten name.
 - b. A notation that the customer authorized the draft.
 - c. The statement "No Signature Required" or words to that effect.

A demand draft may not include a check purportedly drawn by and bearing the signature of a fiduciary.

SECTION 3. AMENDMENT. Section 41-03-53 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-03-53. (3-416) Transfer warranties.

1. A person ~~that~~ who transfers an instrument for consideration warrants to the transferee and, if the transfer is by endorsement, to any subsequent transferee that:
 - a. The warrantor is a person entitled to enforce the instrument.
 - b. All signatures on the instrument are authentic and authorized.
 - c. The instrument has not been altered.
 - d. The instrument is not subject to a defense or claim in recoupment (subsection 1 of section 41-03-31) of any party which can be asserted against the warrantor.
 - e. The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.
 - f. If the instrument is a demand draft, creation of the instrument according to the terms on its face was authorized by the person identified as drawer.

2. A person to whom the warranties under subsection 1 are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.
3. The warranties stated in subsection 1 may not be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection 2 is discharged to the extent of any loss caused by the delay in giving notice of the claim.
4. A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.
5. If the warranty in subdivision f of subsection 1 is not given by a transferor under applicable conflict of law rules, then the warranty is not given to that transferor when that transferor is a transferee.

SECTION 4. AMENDMENT. Section 41-03-54 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-03-54. (3-417) Presentment warranties.

1. If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:
 - a. The warrantor is or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft.
 - b. The draft has not been altered.
 - c. The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.
 - d. If the draft is a demand draft, creation of the demand draft according to the terms on its face was authorized by the person identified as drawer.
2. A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any

warrantor for breach of warranty the amounts stated in the first two sentences of this subsection.

3. If a drawee asserts a claim for breach of warranty under subsection 1 based on an unauthorized endorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the endorsement is effective under section 41-03-41 or 41-03-42 or the drawer is precluded under section 41-03-43 or 41-04-37 from asserting against the drawee the unauthorized endorsement or alteration.
4. If a dishonored draft is presented for payment to the drawer or an endorser or any other instrument is presented for payment to a party obliged to pay the instrument, and payment is received, the following rules apply:
 - a. The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.
 - b. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.
5. The warranties stated in subsections 1 and 4 cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection 2 or 4 is discharged to the extent of any loss caused by the delay in giving notice of the claim.
6. A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.
7. A demand draft is a check, as provided in subsection 6 of section 41-03-04.
8. If the warranty in subdivision d of subsection 1 is not given by a transferor under applicable conflict of law rules, then the warranty is not given to that transferor when that transferor is a transferee.

SECTION 5. AMENDMENT. Section 41-04-19 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-04-19. (4-207) Transfer warranties.

1. A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:
 - a. The warrantor is a person entitled to enforce the item.
 - b. All signatures on the item are authentic and authorized.

- c. The item has not been altered.
 - d. The item is not subject to a defense or claim in recoupment (subsection 1 of section 41-03-31) of any party that can be asserted against the warrantor.
 - e. The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.
 - f. If the item is a demand draft, creation of the item according to the terms on its face was authorized by the person identified as drawer.
2. If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item according to the terms of the item at the time it was transferred, or, if the transfer was of an incomplete item, according to its terms when completed as stated in sections 41-03-15 and 41-03-44. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor may not disclaim its obligation under this subsection by an endorsement stating that it is made "without recourse" or otherwise disclaiming liability.
 3. A person to whom the warranties under subsection 1 are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.
 4. The warranties stated in subsection 1 cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.
 5. A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.
 6. If the warranty in subdivision f of subsection 1 is not given by a transferor or collecting bank under applicable conflict of law rules, the warranty is not given to that transferor when that transferor is a transferee nor to any prior collecting bank of that transferee.

SECTION 6. AMENDMENT. Section 41-04-20 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-04-20. (4-208) Presentment warranties.

1. If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

- a. The warrantor is, or was at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft.
 - b. The draft has not been altered.
 - c. The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.
 - d. If the draft is a demand draft, creation of the demand draft according to the terms on its face was authorized by the person identified as drawer.
2. A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor and, if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in the first two sentences of this subsection.
3. If a drawee asserts a claim for breach of warranty under subsection 1 based on an unauthorized endorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the endorsement is effective under section 41-03-41 or 41-03-42 or the drawer is precluded under section 41-03-43 or 41-04-37 from asserting against the drawee the unauthorized endorsement or alteration.
4. This subsection applies if a dishonored draft is presented for payment to the drawer or an endorser or if any other item is presented for payment to a party obliged to pay the item, and the item is paid. The person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is or was at the time the warrantor transferred the item a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.
5. The warranties stated in subsections 1 and 4 may not be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.
6. A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

7. A demand draft is a check as provided in subsection 6 of section 41-03-04.
8. If the warranty in subdivision d of subsection 1 is not given by a transferor under applicable conflict of law rules, then the warranty is not given to that transferor when that transferor is a transferee.

Approved March 21, 1997
Filed March 21, 1997

CHAPTER 360

SENATE BILL NO. 2142

(Senators Watne, Andrist)
(Representatives Kretschmar, Maragos)

CERTIFICATES OF DEPOSIT AND SECURITY INTERESTS

AN ACT to amend and reenact sections 41-09-05, 41-09-25, and 41-09-26 of the North Dakota Century Code, relating to definition of certificate of deposit, perfection of security interests by filing, and perfection of security interests in certificates of deposit by possession.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁸ **SECTION 1. AMENDMENT.** Section 41-09-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-09-05. (9-105) Definitions and index of definitions.

1. In this chapter unless the context otherwise requires:
 - a. "Account debtor" means the person who is obligated on an account, chattel paper, or general intangible.
 - b. "Certificate of deposit" means a written acknowledgement by a bank that a sum of money has been received by the bank and a promise made by the bank to repay the sum of money. A certificate of deposit may be either negotiable or non-negotiable.
 - c. "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods; but a charter or other contract involving the use or hire of a vessel is not a chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper.
 - d. "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold.
 - e. "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not ~~he~~ that person owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the chapter dealing with

⁸ Section 41-09-05 was also amended by section 6 of Senate Bill No. 2098, chapter 358, and section 9 of Senate Bill No. 2099, chapter 362.

the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires.

- e- f. "Deposit account" means a demand, time, savings, passbook, or like account maintained with a bank, savings and loan association, credit union, or like organization, other than an account evidenced by a certificate of deposit.
- f- g. "Document" means document of title as defined in the general definitions of chapter 41-01 (section 41-01-11), and a receipt of the kind described in subsection 2 of section 41-07-07.
- g- h. "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.
- h- i. "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (section 41-09-34), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also ~~include~~ includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops.
- i- j. "Instrument" means a negotiable instrument (defined in section 41-03-04), a certificated security (defined in section 41-08-02), or any other writing that evidences a right to the payment of money and is not itself a security agreement or lease and is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment.
- j- k. "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like.
- k- l. An advance is made "pursuant to commitment" if the secured party ~~has~~ is bound ~~himself~~ to make it, whether or not a subsequent event of default or other event not within ~~his~~ the party's control has relieved or may relieve ~~him~~ the party from ~~his~~ the obligation.
- l- m. "Secured party" means a lender, seller, or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement, or the like are represented by a trustee or other person, the representative is the secured party.
- m- n. "Security agreement" means an agreement which creates or provides for a security interest.
- n- o. "Transmitting utility" means any person primarily engaged in the railroad, or street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service.

2. Other definitions applying to this chapter and the sections in which they appear are:

a. "Account".	Section 41-09-06.
b. "Attach".	Section 41-09-16.
c. "Construction mortgage".	Subsection 1 of section 41-09-34.
d. "Consumer goods".	Subsection 1 of section 41-09-09.
e. "Equipment".	Subsection 2 of section 41-09-09.
f. "Farm products".	Subsection 3 of section 41-09-09.
g. "Fixture filing".	Section 41-09-34.
h. "Fixtures".	Section 41-09-34.
i. "General intangibles".	Section 41-09-06.
j. "Inventory".	Subsection 4 of section 41-09-09.
k. "Lien creditor".	Subsection 3 of section 41-09-22.
l. "Proceeds".	Subsection 1 of section 41-09-27.
m. "Purchase money security interest".	Section 41-09-07.
n. "Real estate interest".	Section 41-09-34.
o. "United States".	Section 41-09-03.

3. The following definitions in other chapters apply to this chapter:

a. "Check".	Section 41-03-04.
b. "Contract for sale".	Section 41-02-06.
c. "Holder in due course".	Section 41-03-28.
d. "Note".	Section 41-03-04.
e. "Sale".	Section 41-02-06.

4. In addition, chapter 41-01 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

⁹ **SECTION 2. AMENDMENT.** Section 41-09-25 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-09-25. (9-304) Perfection of security interest in instruments, documents, and goods covered by documents - Perfection by permissive filing - Temporary perfection without filing or transfer of possession.

1. A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments, other than certificated securities or instruments that constitute part of chattel paper, and certificates of deposit can be perfected only by the secured party's taking possession, except as provided in subsections 4 and 5 of this section and subsections 2 and 3 of section 41-09-27.
2. During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during that period is subject thereto.

⁹ Section 41-09-25 was also amended by section 8 of Senate Bill No. 2098, chapter 358, and section 18 of Senate Bill No. 2099, chapter 362.

3. A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.
4. A security interest in a negotiable document, certificate of deposit, or an instrument other than a certificated security is perfected without filing or the taking of possession for a period of twenty-one days after it attaches to the extent that it arises for new value given under a written security agreement.
5. A security interest remains perfected for a period of twenty-one days without filing if a secured party having a perfected security interest in a negotiable document, certificate of deposit, an instrument other than a certificated security, or goods in possession of a bailee other than one who has issued a negotiable document therefor:
 - a. Makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to subsection 3 of section 41-09-33; or
 - b. Delivers the instrument or certificate of deposit to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal, or registration of transfer.
6. After the twenty-one-day period in subsections 4 and 5, perfection depends upon compliance with applicable provisions of this chapter.

¹⁰ **SECTION 3. AMENDMENT.** Section 41-09-26 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-09-26. (9-305) When possession by secured party perfects security interest without filing. A security interest in letters of credit and advices of credit (subdivision a of subsection 2 of section 41-05-16), goods, certificates of deposit, instruments other than certificated securities, money, negotiable documents, or chattel paper may be perfected by the secured party's taking possession of the collateral. If the collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this chapter. The security interest may be otherwise perfected as provided in this chapter before or after the period of possession by the secured party.

Approved March 19, 1997
Filed March 19, 1997

¹⁰ Section 41-09-26 was also amended by section 9 of Senate Bill No. 2098, chapter 358, and section 19 of Senate Bill No. 2099, chapter 362.

CHAPTER 361**SENATE BILL NO. 2295**

(Senators Wanzek, Klein)
(Representatives D. Johnson, Nicholas)

CROP FINANCING STATEMENT DESCRIPTIONS

AN ACT to amend and reenact subsection 1 of section 41-09-16 and section 41-09-41 of the North Dakota Century Code, relating to real estate descriptions in financing statements covering crops.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹ **SECTION 1. AMENDMENT.** Subsection 1 of section 41-09-16 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Subject to the provisions of section 41-04-22 on the security interest of the collecting bank, section 41-08-36.1 on security interests in securities, and section 41-09-13 on a security interest arising under the chapters on sales and leases, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless all of the following take place:
 - a. The collateral is in the possession of the secured party pursuant to agreement, or the debtor has signed a security agreement that contains a description of the collateral and, in addition, if the security interest covers ~~crops growing or to be grown~~ or timber to be cut, a description of the land concerned.
 - b. Value has been given.
 - c. The debtor has rights in the collateral.

SECTION 2. AMENDMENT. Section 41-09-41 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-09-41. (9-402) Formal requisites of financing statement - Amendments - Mortgage as financing statement.

1. A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor, and contains a statement indicating the types, or describing the items, of collateral; except a financing statement that is to be filed to gain protection under the central notice system must include a reasonable description of the

¹¹ Section 41-09-16 was also amended by section 13 of Senate Bill No. 2099, chapter 362, and section 14 of Senate Bill No. 2099, chapter 362.

property, including the county in which the property is located, and any other additional information required by the Food Security Act of 1985 [Pub. L. 99-198; 99 Stat. 1535; 7 U.S.C. 1631], as prescribed by the secretary of state. The secretary of state shall prescribe one form that can be used to perfect a security interest in farm products or gain protection under the central notice system, or both. In addition, to be sufficient a financing statement filed after July 1, 1987, must include either the social security number or federal tax identification number of the debtor. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. ~~When the financing statement covers crops growing or to be grown, the statement must also contain a description of the real estate concerned.~~ When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to subsection 5 of section 41-09-03, or when the financing statement is filed as a fixture filing (section 41-09-34), and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection 5. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor. A carbon, photographic, or other reproduction of a security agreement or a financing statement is sufficient as a financing statement if the security agreement so provides or if the original has been filed in this state.

2. A financing statement that otherwise complies with subsection 1 is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in:
 - a. Collateral already subject to a security interest in another jurisdiction when it is brought into this state, or when the debtor's location is changed to this state. The financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances;
 - b. Proceeds under section 41-09-27 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral;
 - c. Collateral as to which the filing has lapsed; or
 - d. Collateral acquired after a change of name, identity, or corporate structure of the debtor (subsection 7).

3. A form substantially as follows is sufficient to comply with subsection 1:

Name of debtor (or assignor) _____
 Address _____
 Debtor's social security number or federal tax
 identification number _____
 Name of secured party (or assignee) _____
 Address _____

 - a. This financing statement covers the following types (or items) of property:
 (Describe) _____
 - b. ~~(If collateral is crops) The above described crops are growing or are to be grown on:~~

(Describe real estate) _____

- e- (If applicable) The above goods are to become fixtures on:
(Describe real estate) _____

and this financing statement is to be filed for record in the real estate records. (If the debtor does not have an interest of record.)
The name of a record owner is _____.

- e- c. (If products of collateral are claimed)
Products of the collateral are also covered.
(use) _____
whichever) Signature of Debtor (or Assignor)
is) _____
applicable)) Signature of Secured Party
(or Assignor)

4. A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this chapter, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.
5. A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to subsection 5 of section 41-09-03, or a financing statement filed as a fixture filing (section 41-09-34) where the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed for record in the real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.
6. A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if:
- The goods are described in the mortgage by item or type;
 - The goods are or are to become fixtures related to the real estate described in the mortgage;
 - The mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records; and
 - The mortgage is duly recorded.

No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

7. A financing statement sufficiently shows the name of the debtor if it gives the individual, limited liability company, partnership, or corporate name

of the debtor, whether or not it adds other trade names or the names of partners. Where the debtor so changes ~~his~~ the debtor's name, or in the case of an organization, its name, identity, or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

8. A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.
9. ~~A financing statement covering crops growing or to be grown must show that it covers crops and where the debtor is not a transmitting utility the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state.~~
- ~~10.~~ A financing statement filed to gain protection under the central notice system must be amended within three months of a material change to reflect that change. The amended financing statement must be signed by both the debtor and secured party and filed in the same manner as the original financing statement.

Approved March 25, 1997
Filed March 26, 1997

CHAPTER 362**SENATE BILL NO. 2099**

(Judiciary Committee)

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

INVESTMENT SECURITIES

AN ACT to create and enact chapter 41-08 and two new sections to chapter 41-09 of the North Dakota Century Code, relating to the Uniform Commercial Code revised article 8 pertaining to investment securities, investment property, and security interests arising in purchase or delivery of financial assets; to amend and reenact subsection 1 of section 10-19.1-67, subsection 3 of section 10-32-28, subdivision e of subsection 2 of section 41-01-05, subsection 2 of section 41-01-16, subdivision f of subsection 1 of section 41-04-04, subsection 2 of section 41-05-14, subsection 6 of section 41-09-03, sections 41-09-05, 41-09-06, subsections 1 and 4 of section 41-09-16, subdivision d of subsection 1 of section 41-09-22, subsection 1 of section 41-09-23, subsection 1 of section 41-09-24, sections 41-09-25, 41-09-26, subsections 1 and 3 of section 41-09-27, section 41-09-30, and subsections 1 and 7 of section 41-09-33 of the North Dakota Century Code, relating to adoption of revised article 8; and to repeal chapter 10-18.1 and the present chapter 41-08 of the North Dakota Century Code, relating to the Uniform Act for the Simplification of Fiduciary Security Transfers and investment securities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 10-19.1-67 of the North Dakota Century Code is amended and reenacted as follows:

1. A new share certificate may be issued pursuant to section ~~41-08-41~~ 41-08-38 in place of one that is alleged to have been lost, stolen, or destroyed.

¹² **SECTION 2. AMENDMENT.** Subsection 3 of section 10-32-28 of the North Dakota Century Code is amended and reenacted as follows:

3. Notwithstanding any other provision of law, for the purpose of any law relating to security interests, a membership interest, governance rights, and financial rights are each a general intangible, as defined in section 41-09-06, and not a certificated security as defined in ~~subdivision a of subsection 4 of section 41-08-02~~, an uncertificated security as defined in ~~subdivision b of subsection 4 of section 41-08-02~~, chattel paper as defined in ~~subdivision b of subsection 4 of section 41-09-05~~, an instrument as defined in ~~subdivision i of subsection 4 of section 41-09-05~~, or an account as defined in section 41-09-06.

¹² Section 10-32-28 was also amended by section 112 of Senate Bill No. 2344, chapter 103.

¹³ **SECTION 3. AMENDMENT.** Subdivision e of subsection 2 of section 41-01-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- e. Applicability of the chapter on investment securities. Section ~~41-08-06~~ 41-08-10.

SECTION 4. AMENDMENT. Subsection 2 of section 41-01-16 of the North Dakota Century Code is amended and reenacted as follows:

2. Subsection 1 does not apply to contracts for the sale of goods (section 41-02-08) nor of securities (section ~~41-08-35~~ 41-08-13) nor to security agreements (section 41-09-16).

SECTION 5. AMENDMENT. Subdivision f of subsection 1 of section 41-04-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- f. "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (section 41-08-02), or instructions for uncertificated securities (section ~~41-08-24~~ 41-08-02), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft.

¹⁴ **SECTION 6. AMENDMENT.** Subsection 2 of section 41-05-14 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Unless otherwise agreed, when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (section 41-07-36) or of a certificated security (section ~~41-08-22~~ 41-08-08) or is forged or fraudulent or there is fraud in the transaction:
 - a. The issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances that would make it a holder in due course (section 41-03-28) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (section 41-07-31) or a bona fide purchaser of a certificated security (section 41-08-18); and
 - b. In all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery, or other defect not

¹³ Section 41-01-05 was also amended by section 1 of Senate Bill No. 2098, chapter 358.

¹⁴ Section 41-05-14 was also amended by section 3 of Senate Bill No. 2098, chapter 358.

apparent on the face of the documents, but a court of appropriate jurisdiction may enjoin the honor.

SECTION 7. Chapter 41-08 of the North Dakota Century Code is created and enacted as follows:

41-08-01. (8-101) Short title. This chapter may be cited as Uniform Commercial Code - Investment Securities.

41-08-02. (8-102) Definitions.

1. In this chapter:

- a.** "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.
- b.** "Bearer form", as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an endorsement.
- c.** "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.
- d.** "Certificated security" means a security that is represented by a certificate.
- e.** "Clearing corporation" means:

 - (1)** A person registered as a "clearing agency" under the federal securities laws;
 - (2)** A federal reserve bank; or
 - (3)** Any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.
- f.** "Communicate" means to:

 - (1)** Send a signed writing; or
 - (2)** Transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.
- g.** "Endorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

- h. "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of subdivision b or c of subsection 2 of section 41-08-41, that person is the entitlement holder.
- i. "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.
- j. "Financial asset", except as otherwise provided in section 41-08-03, means:
- (1) A security;
 - (2) An obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or
 - (3) Any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this chapter.

As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

- k. "Good faith", for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this chapter, means honesty in fact and the observance of reasonable commercial standards of fair dealing.
- l. "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.
- m. "Registered form", as applied to a certificated security, means a form in which:
- (1) The security certificate specifies a person entitled to the security; and
 - (2) A transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.
- n. "Securities intermediary" means:
- (1) A clearing corporation; or

- (2) A person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.
 - o. "Security", except as otherwise provided in section 41-08-03, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:
 - (1) Which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;
 - (2) Which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and
 - (3) Which:
 - (a) Is, or is of a type, dealt in or traded on securities exchanges or securities markets; or
 - (b) Is a medium for investment and by its terms expressly provides that it is a security governed by this chapter.
 - p. "Security certificate" means a certificate representing a security.
 - q. "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in sections 41-08-41 through 41-08-51.
 - r. "Uncertificated security" means a security that is not represented by a certificate.
2. Other definitions applying to this chapter and the sections in which they appear are:
- a. "Appropriate person". Section 41-08-07.
 - b. "Control". Section 41-08-06.
 - c. "Delivery". Section 41-08-24.
 - d. "Investment company security". Section 41-08-03.
 - e. "Issuer". Section 41-08-17.
 - f. "Overissue". Section 41-08-26.
 - g. "Protected purchaser". Section 41-08-29.
 - h. "Securities account". Section 41-08-41.
3. In addition, chapter 41-01 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

4. The characterization of a person, business, or transaction for purposes of this chapter does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

41-08-03. (8-103) Rules for determining whether certain obligations and interests are securities or financial assets. In this chapter:

1. A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.
2. An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. "Investment company security" does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.
3. An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this chapter, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.
4. A writing that is a security certificate is governed by this chapter and not by chapter 41-03, even though it also meets the requirements of that chapter. However, a negotiable instrument governed by chapter 41-03 is a financial asset if it is held in a securities account.
5. An option or similar obligation issued by a clearing corporation to its participants is not a security but is a financial asset.
6. A commodity contract, as defined in section 11 of this Act, is not a security or a financial asset.

41-08-04. (8-104) Acquisition of security or financial asset or interest therein.

1. A person acquires a security or an interest therein, under this chapter, if:
 - a. The person is a purchaser to whom a security is delivered pursuant to section 41-08-27; or
 - b. The person acquires a security entitlement to the security pursuant to section 41-08-41.
2. A person acquires a financial asset, other than a security, or an interest therein, under this chapter, if the person acquires a security entitlement to the financial asset.
3. A person who acquires a security entitlement to a security or other financial asset has the rights specified in sections 41-08-41 through 41-08-51, but is a purchaser of any security, security entitlement, or

other financial asset held by the securities intermediary only to the extent provided in section 41-08-43.

4. Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange, or otherwise put in the possession of another person a security or financial asset satisfies that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to subsection 1 or 2.

41-08-05. (8-105) Notice of adverse claim.

1. A person has notice of an adverse claim if:
 - a. The person knows of the adverse claim;
 - b. The person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or
 - c. The person has a duty, imposed by statute or regulation, to investigate whether an adverse claim exists, and the investigation required would establish the existence of the adverse claim.
2. Having knowledge that a financial asset or interest therein is or has been transferred by a representative imposes no duty of inquiry into the rightfulness of a transaction and is not notice of an adverse claim. However, a person who knows that a representative has transferred a financial asset or interest therein in a transaction that is, or whose proceeds are being used, for the individual benefit of the representative or otherwise in breach of duty has notice of an adverse claim.
3. An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or sets a date on or after which the certificate is to be presented or surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the case of a transfer more than:
 - a. One year after a date set for presentment or surrender for redemption or exchange; or
 - b. Six months after a date set for payment of money against presentation or surrender of the certificate, if money was available for payment on that date.
4. A purchaser of a certificated security has notice of an adverse claim if the security certificate:
 - a. Whether in bearer or registered form, has been endorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or
 - b. Is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.

5. Filing of a financing statement under chapter 41-09 is not notice of an adverse claim to a financial asset.

41-08-06. (8-106) Control.

1. A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.
2. A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser, and:
 - a. The certificate is endorsed to the purchaser or in blank by an effective endorsement; or
 - b. The certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.
3. A purchaser has "control" of an uncertificated security if:
 - a. The uncertificated security is delivered to the purchaser; or
 - b. The issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.
4. A purchaser has "control" of a security entitlement if:
 - a. The purchaser becomes the entitlement holder; or
 - b. The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder.
5. If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.
6. A purchaser who has satisfied the requirements of subdivision b of subsection 3 or subdivision b of subsection 4 has control even if the registered owner in the case of subdivision b of subsection 3 or the entitlement holder in the case of subdivision b of subsection 4 retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.
7. An issuer or a securities intermediary may not enter into an agreement of the kind described in subdivision b of subsection 3 or subdivision b of subsection 4 without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

41-08-07. (8-107) Whether endorsement, instruction, or entitlement order is effective.

1. "Appropriate person" means:

 - a. With respect to an endorsement, the person specified by a security certificate or by an effective special endorsement to be entitled to the security;
 - b. With respect to an instruction, the registered owner of an uncertificated security;
 - c. With respect to an entitlement order, the entitlement holder;
 - d. If the person designated in subdivision a, b, or c is deceased, the designated person's successor taking under other law or the designated person's personal representative acting for the estate of the decedent; or
 - e. If the person designated in subdivision a, b, or c lacks capacity, the designated person's guardian, conservator, or other similar representative who has power under other law to transfer the security or financial asset.
2. An endorsement, instruction, or entitlement order is effective if:

 - a. It is made by the appropriate person;
 - b. It is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under subdivision b of subsection 3 or subdivision b of subsection 4 of section 41-08-06; or
 - c. The appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.
3. An endorsement, instruction, or entitlement order made by a representative is effective even if:

 - a. The representative has failed to comply with a controlling instrument or with the law of the state having jurisdiction of the representative relationship, including any law requiring the representative to obtain court approval of the transaction; or
 - b. The representative's action in making the endorsement, instruction, or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.
4. If a security is registered in the name of or specially endorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an endorsement, instruction, or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.

5. Effectiveness of an endorsement, instruction, or entitlement order is determined as of the date the endorsement, instruction, or entitlement order is made, and an endorsement, instruction, or entitlement order does not become ineffective by reason of any later change of circumstances.

41-08-08. (8-108) Warranties in direct holding.

1. A person who transfers a certificated security to a purchaser for value warrants to the purchaser, and an endorser, if the transfer is by endorsement, warrants to any subsequent purchaser, that:
- a. The certificate is genuine and has not been materially altered;
 - b. The transferor or endorser does not know of any fact that might impair the validity of the security;
 - c. There is no adverse claim to the security;
 - d. The transfer does not violate any restriction on transfer;
 - e. If the transfer is by endorsement, the endorsement is made by an appropriate person, or if the endorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and
 - f. The transfer is otherwise effective and rightful.
2. A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that:
- a. The instruction is made by an appropriate person, or if the instruction is by an agent, the agent has actual authority to act on behalf of the appropriate person;
 - b. The security is valid;
 - c. There is no adverse claim to the security; and
 - d. At the time the instruction is presented to the issuer:
 - (1) The purchaser will be entitled to the registration of transfer;
 - (2) The transfer will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction;
 - (3) The transfer will not violate any restriction on transfer; and
 - (4) The requested transfer will otherwise be effective and rightful.
3. A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants that:
- a. The uncertificated security is valid;

- b. There is no adverse claim to the security;
 - c. The transfer does not violate any restriction on transfer; and
 - d. The transfer is otherwise effective and rightful.
 - 4. A person who endorses a security certificate warrants to the issuer that:
 - a. There is no adverse claim to the security; and
 - b. The endorsement is effective.
 - 5. A person who originates an instruction for registration of transfer of an uncertificated security warrants to the issuer that:
 - a. The instruction is effective; and
 - b. At the time the instruction is presented to the issuer the purchaser will be entitled to the registration of transfer.
 - 6. A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only that the person has no knowledge of any unauthorized signature in a necessary endorsement.
 - 7. If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered, and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security certificate warrants only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.
 - 8. A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent under subsection 7.
 - 9. Except as otherwise provided in subsection 7, a broker acting for a customer makes to the issuer and a purchaser the warranties provided in subsections 1 through 6. A broker that delivers a security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated security, makes to the customer the warranties provided in subsection 1 or 2, and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of the customer.

41-08-09. (8-109) Warranties in indirect holding.

- 1. A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that:

- a. The entitlement order is made by an appropriate person, or if the entitlement order is by an agent, the agent has actual authority to act on behalf of the appropriate person; and
 - b. There is no adverse claim to the security entitlement.
2. A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a securities account makes to the securities intermediary the warranties specified in subsection 1 or 2 of section 41-08-08.
3. If a securities intermediary delivers a security certificate to its entitlement holder or causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement holder the warranties specified in subsection 1 or 2 of section 41-08-08.

41-08-10. (8-110) Applicability - Choice of law.

1. The local law of the issuer's jurisdiction, as specified in subsection 4, governs:
 - a. The validity of a security;
 - b. The rights and duties of the issuer with respect to registration of transfer;
 - c. The effectiveness of registration of transfer by the issuer;
 - d. Whether the issuer owes any duties to an adverse claimant to a security; and
 - e. Whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.
2. The local law of the securities intermediary's jurisdiction, as specified in subsection 5, governs:
 - a. Acquisition of a security entitlement from the securities intermediary;
 - b. The rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;
 - c. Whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and
 - d. Whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

3. The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.
4. "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this state may specify the law of another jurisdiction as the law governing the matters specified in subdivisions b through e of subsection 1.
5. The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:
 - a. If an agreement between the securities intermediary and its entitlement holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.
 - b. If an agreement between the securities intermediary and its entitlement holder does not specify the governing law as provided in subdivision a, but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.
 - c. If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in subdivision a or b, the securities intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the entitlement holder's account.
 - d. If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in subdivision a or b and an account statement does not identify an office serving the entitlement holder's account as provided in subdivision c, the securities intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the securities intermediary.
6. A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other recordkeeping concerning the account.

41-08-11. (8-111) Clearing corporation rules. A rule adopted by a clearing corporation governing rights and obligations among the clearing corporation and its participants in the clearing corporation is effective even if the rule conflicts with this Act and affects another party who does not consent to the rule.

41-08-12. (8-112) Creditor's legal process.

1. The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in

- subsection 4. However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.
2. The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States, except as otherwise provided in subsection 4.
 3. The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained, except as otherwise provided in subsection 4.
 4. The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.
 5. A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process.

41-08-13. (8-113) Statute of frauds inapplicable. A contract or modification of a contract for the sale or purchase of a security is enforceable whether or not there is a writing signed or record authenticated by a party against whom enforcement is sought, even if the contract or modification is not capable of performance within one year of its making.

41-08-14. (8-114) Evidentiary rules concerning certificated securities. The following rules apply in an action on a certificated security against the issuer:

1. Unless specifically denied in the pleadings, each signature on a security certificate or in a necessary endorsement is admitted.
2. If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on the party claiming under the signature, but the signature is presumed to be genuine or authorized.
3. If signatures on a security certificate are admitted or established, production of the certificate entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security.
4. If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect cannot be asserted.

41-08-15. (8-115) Securities intermediary and others not liable to adverse claimant. A securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or principal, is not liable to a

person having an adverse claim to the financial asset, unless the securities intermediary, or broker or other agent or bailee:

1. Took the action after it had been served with an injunction, restraining order, or other legal process enjoining it from doing so, issued by a court of competent jurisdiction, and had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or
2. Acted in collusion with the wrongdoer in violating the rights of the adverse claimant; or
3. In the case of a security certificate that has been stolen, acted with notice of the adverse claim.

41-08-16. (8-116) Securities intermediary as purchaser for value. A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favor of an entitlement holder is a purchaser for value of the financial asset. A securities intermediary that acquires a security entitlement to a financial asset from another securities intermediary acquires the security entitlement for value if the securities intermediary acquiring the security entitlement establishes a security entitlement to the financial asset in favor of an entitlement holder.

41-08-17. (8-201) Issuer.

1. With respect to an obligation on or a defense to a security, an "issuer" includes a person who:
 - a. Places or authorizes the placing of its name on a security certificate, other than as authenticating trustee, registrar, transfer agent, or the like, to evidence a share, participation, or other interest in its property or in an enterprise, or to evidence its duty to perform an obligation represented by the certificate;
 - b. Creates a share, participation, or other interest in its property or in an enterprise, or undertakes an obligation, that is an uncertificated security;
 - c. Directly or indirectly creates a fractional interest in its rights or property, if the fractional interest is represented by a security certificate; or
 - d. Becomes responsible for, or in place of, another person described as an issuer in this section.
2. With respect to an obligation on or defense to a security, a guarantor is an issuer to the extent of its guaranty, whether or not its obligation is noted on a security certificate.
3. With respect to a registration of a transfer, issuer means a person on whose behalf transfer books are maintained.

41-08-18. (8-202) Issuer's responsibility and defenses - Notice of defect or defense.

1. Even against a purchaser for value and without notice, the terms of a certificated security include terms stated on the certificate and terms made part of the security by reference on the certificate to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the like, to the extent the terms referred to do not conflict with terms stated on the certificate. A reference under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even if the certificate expressly states that a person accepting it admits notice. The terms of an uncertificated security include those stated in any instrument, indenture, or document or in a constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the security is issued.
2. The following rules apply if an issuer asserts that a security is not valid:

 - a. A security other than one issued by a government or governmental subdivision, agency, or instrumentality, even though issued with a defect going to its validity, is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of a constitutional provision. In that case, the security is valid in the hands of a purchaser for value and without notice of the defect, other than one who takes by original issue.
 - b. Subdivision a applies to an issuer that is a government or governmental subdivision, agency, or instrumentality only if there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.
3. Except as otherwise provided in section 41-08-21, lack of genuineness of a certificated security is a complete defense, even against a purchaser for value and without notice.
4. All other defenses of the issuer of a security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the certificated security without notice of the particular defense.
5. This section does not affect the right of a party to cancel a contract for a security "when, as and if issued" or "when distributed" in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.
6. If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly.

41-08-19. (8-203) Staleness as notice of defect or defense. After an act or event, other than a call that has been revoked, creating a right to immediate performance of the principal obligation represented by a certificated security or setting a date on or after which the security is to be presented or surrendered for

redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer, if the act or event:

1. Requires the payment of money, the delivery of a certificated security, the registration of transfer of an uncertificated security, or any of them on presentation or surrender of the security certificate, the money or security is available on the date set for payment or exchange, and the purchaser takes the security more than one year after that date; or
2. Is not covered by subsection 1 and the purchaser takes the security more than two years after the date set for surrender or presentation or the date on which performance became due.

41-08-20. (8-204) Effect of issuer's restriction on transfer. A restriction on transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without knowledge of the restriction unless:

1. The security is certificated and the restriction is noted conspicuously on the security certificate; or
2. The security is uncertificated and the registered owner has been notified of the restriction.

41-08-21. (8-205) Effect of unauthorized signature on security certificate. An unauthorized signature placed on a security certificate before or in the course of issue is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security if the purchaser is without notice of the lack of authority and the signing has been done by:

1. An authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security certificate or of similar security certificates, or the immediate preparation for signing of any of them; or
2. An employee of the issuer, or of any of the persons listed in subsection 1, entrusted with responsible handling of the security certificate.

41-08-22. (8-206) Completion or alteration of security certificate.

1. If a security certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:
 - a. Any person may complete it by filling in the blanks as authorized; and
 - b. Even if the blanks are incorrectly filled in, the security certificate as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.
2. A complete security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms.

41-08-23. (8-207) Rights and duties of issuer with respect to registered owners.

1. Before due presentment for registration of transfer of a certificated security in registered form or of an instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, receive notifications, and otherwise exercise all the rights and powers of an owner.
2. This chapter does not affect the liability of the registered owner of a security for a call, assessment, or the like.

41-08-24. (8-208) Effect of signature of authenticating trustee, registrar, or transfer agent.

1. A person signing a security certificate as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a particular defect, that:
 - a. The certificate is genuine;
 - b. The person's own participation in the issue of the security is within the person's capacity and within the scope of the authority received by the person from the issuer; and
 - c. The person has reasonable grounds to believe that the certificated security is in the form and within the amount the issuer is authorized to issue.
2. Unless otherwise agreed, a person signing under subsection 1 does not assume responsibility for the validity of the security in other respects.

41-08-25. (8-209) Issuer's lien. A lien in favor of an issuer upon a certificated security is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security certificate.

41-08-26. (8-210) Overissue.

1. In this section, "overissue" means the issue of securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur if appropriate action has cured the overissue.
2. Except as otherwise provided in subsections 3 and 4, the provisions of this chapter which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue.
3. If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to issue or validation may compel the issuer to purchase the security and deliver it if certificated or register its transfer if uncertificated against surrender of any security certificate the person holds.
4. If a security is not reasonably available for purchase, a person entitled to issue or validation may recover from the issuer the price the person or the last purchaser for value paid for it with interest from the date of the person's demand.

41-08-27. (8-301) Delivery.

1. Delivery of a certificated security to a purchaser occurs when:
 - a. The purchaser acquires possession of the security certificate;
 - b. Another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or
 - c. A securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and has been specially endorsed to the purchaser by an effective endorsement.
2. Delivery of an uncertificated security to a purchaser occurs when:
 - a. The issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or
 - b. Another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser.

41-08-28. (8-302) Rights of purchaser.

1. Except as otherwise provided in subsections 2 and 3, upon delivery of a certificated or uncertificated security to a purchaser, the purchaser acquires all rights in the security that the transferor had or had power to transfer.
2. A purchaser of a limited interest acquires rights only to the extent of the interest purchased.
3. A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser.

41-08-29. (8-303) Protected purchaser.

1. "Protected purchaser" means a purchaser of a certificated or uncertificated security, or of an interest therein, who:
 - a. Gives value;
 - b. Does not have notice of any adverse claim to the security; and
 - c. Obtains control of the certificated or uncertificated security.
2. In addition to acquiring the rights of a purchaser, a protected purchaser also acquires its interest in the security free of any adverse claim.

41-08-30. (8-304) Endorsement.

1. An endorsement may be in blank or special. An endorsement in blank includes an endorsement to bearer. A special endorsement specifies to whom a security is to be transferred or who has power to transfer it. A holder may convert a blank endorsement to a special endorsement.
2. An endorsement purporting to be only of part of a security certificate representing units intended by the issuer to be separately transferable is effective to the extent of the endorsement.
3. An endorsement, whether special or in blank, does not constitute a transfer until delivery of the certificate on which it appears or, if the endorsement is on a separate document, until delivery of both the document and the certificate.
4. If a security certificate in registered form has been delivered to a purchaser without a necessary endorsement, the purchaser may become a protected purchaser only when the endorsement is supplied. However, against a transferor, a transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary endorsement supplied.
5. An endorsement of a security certificate in bearer form may give notice of an adverse claim to the certificate, but it does not otherwise affect a right to registration that the holder possesses.
6. Unless otherwise agreed, a person making an endorsement assumes only the obligations provided in section 41-08-08 and not an obligation that the security will be honored by the issuer.

41-08-31. (8-305) Instruction.

1. If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed, even though it has been completed incorrectly.
2. Unless otherwise agreed, a person initiating an instruction assumes only the obligations imposed by section 41-08-08 and not an obligation that the security will be honored by the issuer.

41-08-32. (8-306) Effect of guaranteeing signature, endorsement, or instruction.

1. A person who guarantees a signature of an endorser of a security certificate warrants that at the time of signing:
 - a. The signature was genuine;
 - b. The signer was an appropriate person to endorse, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person; and
 - c. The signer had legal capacity to sign.
2. A person who guarantees a signature of the originator of an instruction warrants that at the time of signing:

- a. The signature was genuine;
 - b. The signer was an appropriate person to originate the instruction, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person, if the person specified in the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature guarantor does not make a warranty; and
 - c. The signer had legal capacity to sign.
3. A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under subsection 2 and also warrants that at the time the instruction is presented to the issuer:
 - a. The person specified in the instruction as the registered owner of the uncertificated security will be the registered owner; and
 - b. The transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.
4. A guarantor under subsections 1 and 2 or a special guarantor under subsection 3 does not otherwise warrant the rightfulness of the transfer.
5. A person who guarantees an endorsement of a security certificate makes the warranties of a signature guarantor under subsection 1 and also warrants the rightfulness of the transfer in all respects.
6. A person who guarantees an instruction requesting the transfer of an uncertificated security makes the warranties of a special signature guarantor under subsection 3 and also warrants the rightfulness of the transfer in all respects.
7. An issuer may not require a special guaranty of signature, a guaranty of endorsement, or a guaranty of instruction as a condition to registration of transfer.
8. The warranties under this section are made to a person taking or dealing with the security in reliance on the guaranty, and the guarantor is liable to the person for loss resulting from their breach. An endorser or originator of an instruction whose signature, endorsement, or instruction has been guaranteed is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the guarantor.

41-08-33. (8-307) Purchaser's right to requisites for registration of transfer.

Unless otherwise agreed, the transferor of a security on due demand shall supply the purchaser with proof of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security, but if the transfer is not for value, a transferor need not comply unless the purchaser pays the necessary expenses. If the transferor fails within a reasonable time to comply with the demand, the purchaser may reject or rescind the transfer.

41-08-34. (8-401) Duty of issuer to register transfer.

1. If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security, the issuer shall register the transfer as requested if:
 - a. Under the terms of the security the person seeking registration of transfer is eligible to have the security registered in its name;
 - b. The endorsement or instruction is made by the appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;
 - c. Reasonable assurance is given that the endorsement or instruction is genuine and authorized (section 41-08-35);
 - d. Any applicable law relating to the collection of taxes has been complied with;
 - e. The transfer does not violate any restriction on transfer imposed by the issuer in accordance with section 41-08-20;
 - f. A demand that the issuer not register transfer has not become effective under section 41-08-36, or the issuer has complied with subsection 2 of section 41-08-36 but no legal process or indemnity bond is obtained as provided in subsection 4 of section 41-08-36; and
 - g. The transfer is in fact rightful or is to a protected purchaser.
2. If an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration or to the person's principal for loss resulting from unreasonable delay in registration or failure or refusal to register the transfer.

41-08-35. (8-402) Assurance that endorsement or instruction is effective.

1. An issuer may require the following assurance that each necessary endorsement or each instruction is genuine and authorized:
 - a. In all cases, a guaranty of the signature of the person making an endorsement or originating an instruction including, in the case of an instruction, reasonable assurance of identity;
 - b. If the endorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to sign;
 - c. If the endorsement is made or the instruction is originated by a fiduciary pursuant to subdivision d or e of subsection 1 of section 41-08-07, appropriate evidence of appointment or incumbency;
 - d. If there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and
 - e. If the endorsement is made or the instruction is originated by a person not covered by another provision of this subsection,

assurance appropriate to the case corresponding as nearly as may be to the provisions of this subsection.

2. An issuer may elect to require reasonable assurance beyond that specified in this section.
3. In this section:
 - a. "Appropriate evidence of appointment or incumbency" means:
 - (1) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of the court or an officer thereof and dated within sixty days before the date of presentation for transfer; or
 - (2) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by an issuer to be responsible or, in the absence of that document or certificate, other evidence the issuer reasonably considers appropriate.
 - b. "Guaranty of the signature" means a guaranty signed by or on behalf of a person reasonably believed by the issuer to be responsible. An issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.

41-08-36. (8-403) Demand that issuer not register transfer.

1. A person who is an appropriate person to make an endorsement or originate an instruction may demand that the issuer not register transfer of a security by communicating to the issuer a notification that identifies the registered owner and the issue of which the security is a part and provides an address for communications directed to the person making the demand. The demand is effective only if it is received by the issuer at a time and in a manner affording the issuer reasonable opportunity to act on it.
2. If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security after a demand that the issuer not register transfer has become effective, the issuer shall promptly communicate to (a) the person who initiated the demand at the address provided in the demand and (b) the person who presented the security for registration of transfer or initiated the instruction requesting registration of transfer a notification stating that:
 - a. The certificated security has been presented for registration of transfer or the instruction for registration of transfer of the uncertificated security has been received;
 - b. A demand that the issuer not register transfer had previously been received; and
 - c. The issuer will withhold registration of transfer for a period of time stated in the notification in order to provide the person who

initiated the demand an opportunity to obtain legal process or an indemnity bond.

3. The period described in subdivision c of subsection 2 may not exceed thirty days after the date of communication of the notification. A shorter period may be specified by the issuer if it is not manifestly unreasonable.
4. An issuer is not liable to a person who initiated a demand that the issuer not register transfer for any loss the person suffers as a result of registration of a transfer pursuant to an effective endorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's communication, either:
 - a. Obtain an appropriate restraining order, injunction, or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer; or
 - b. File with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by refusing to register the transfer.
5. This section does not relieve an issuer from liability for registering transfer pursuant to an endorsement or instruction that was not effective.

41-08-37. (8-404) Wrongful registration.

1. Except as otherwise provided in section 41-08-39, an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security to a person not entitled to it, and the transfer was registered:
 - a. Pursuant to an ineffective endorsement or instruction;
 - b. After a demand that the issuer not register transfer became effective under subsection 1 of section 41-08-36 and the issuer did not comply with subsection 2 of section 41-08-36;
 - c. After the issuer had been served with an injunction, restraining order, or other legal process enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or
 - d. By an issuer acting in collusion with the wrongdoer.
2. An issuer that is liable for wrongful registration of transfer under subsection 1 on demand shall provide the person entitled to the security with a like certificated or uncertificated security, and any payments or distributions that the person did not receive as a result of the wrongful registration. If an overissue would result, the issuer's liability to provide the person with a like security is governed by section 41-08-26.
3. Except as otherwise provided in subsection 1 or in a law relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer of a security if

registration was made pursuant to an effective endorsement or instruction.

41-08-38. (8-405) Replacement of lost, destroyed, or wrongfully taken security certificate.

1. If an owner of a certificated security, whether in registered or bearer form, claims that the certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificate if the owner:
 - a. So requests before the issuer has notice that the certificate has been acquired by a protected purchaser;
 - b. Files with the issuer a sufficient indemnity bond; and
 - c. Satisfies other reasonable requirements imposed by the issuer.
2. If, after the issue of a new security certificate, a protected purchaser of the original certificate presents it for registration of transfer, the issuer shall register the transfer unless an overissue would result. In that case, the issuer's liability is governed by section 41-08-26. In addition to any rights on the indemnity bond, an issuer may recover the new certificate from a person to whom it was issued or any person taking under that person, except a protected purchaser.

41-08-39. (8-406) Obligation to notify issuer of lost, destroyed, or wrongfully taken security certificate. If a security certificate has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice of it and the issuer registers a transfer of the security before receiving notification, the owner may not assert against the issuer a claim for registering the transfer under section 41-08-37 or a claim to a new security certificate under section 41-08-38.

41-08-40. (8-407) Authenticating trustee, transfer agent, and registrar. A person acting as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of a transfer of its securities, in the issue of new security certificates or uncertificated securities, or in the cancellation of surrendered security certificates has the same obligation to the holder or owner of a certificated or uncertificated security with regard to the particular functions performed as the issuer has in regard to those functions.

41-08-41. (8-501) Securities account - Acquisition of security entitlement from securities intermediary.

1. "Securities account" means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.
2. Except as otherwise provided in subsections 4 and 5, a person acquires a security entitlement if a securities intermediary:
 - a. Indicates by book entry that a financial asset has been credited to the person's securities account;

- b. Receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account; or
 - c. Becomes obligated under other law, regulation, or rule to credit a financial asset to the person's securities account.
3. If a condition of subsection 2 has been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.
4. If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially endorsed to the other person, and has not been endorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.
5. Issuance of a security is not establishment of a security entitlement.

41-08-42. (8-502) Assertion of adverse claim against entitlement holder. An action based on an adverse claim to a financial asset, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who acquires a security entitlement under section 41-08-41 for value and without notice of the adverse claim.

41-08-43. (8-503) Property interest of entitlement holder in financial asset held by securities intermediary.

1. To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in section 41-08-51.
2. An entitlement holder's property interest with respect to a particular financial asset under subsection 1 is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.
3. An entitlement holder's property interest with respect to a particular financial asset under subsection 1 may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under sections 41-08-45 through 41-08-48.
4. An entitlement holder's property interest with respect to a particular financial asset under subsection 1 may be enforced against a purchaser of the financial asset or interest therein only if:
 - a. Insolvency proceedings have been initiated by or against the securities intermediary;

- b. The securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset;
- c. The securities intermediary violated its obligations under section 41-08-44 by transferring the financial asset or interest therein to the purchaser; and
- d. The purchaser is not protected under subsection 5.

The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.

5. An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection 1, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under section 41-08-44.

41-08-44. (8-504) Duty of securities intermediary to maintain financial asset.

1. A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.
2. Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection 1.
3. A securities intermediary satisfies the duty in subsection 1 if:
 - a. The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or
 - b. In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.
4. This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements.

41-08-45. (8-505) Duty of securities intermediary with respect to payments and distributions.

1. A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. A securities intermediary satisfies the duty if:
 - a. The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or
 - b. In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.
2. A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary.

41-08-46. (8-506) Duty of securities intermediary to exercise rights as directed by entitlement holder. A securities intermediary shall exercise rights with respect to a financial asset if directed to do so by an entitlement holder. A securities intermediary satisfies the duty if:

1. The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or
2. In the absence of agreement, the securities intermediary either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

41-08-47. (8-507) Duty of securities intermediary to comply with entitlement order.

1. A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if:
 - a. The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or
 - b. In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.
2. If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it, and pay or credit any payments or distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages.

41-08-48. (8-508) Duty of securities intermediary to change entitlement holder's position to other form of security holding. A securities intermediary shall act at the direction of an entitlement holder to change a security entitlement into another

available form of holding for which the entitlement holder is eligible, or to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary. A securities intermediary satisfies the duty if:

1. The securities intermediary acts as agreed upon by the entitlement holder and the securities intermediary; or
2. In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

41-08-49. (8-509) Specification of duties of securities intermediary by other statute or regulation - Manner of performance of duties of securities intermediary and exercise of rights of entitlement holder.

1. If the substance of a duty imposed upon a securities intermediary by sections 41-08-44 through 41-08-48 is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies the duty.
2. To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by other statute, regulation, or rule or by agreement between the securities intermediary and entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.
3. The obligation of a securities intermediary to perform the duties imposed by sections 41-08-44 through 41-08-48 is subject to:
 - a. Rights of the securities intermediary arising out of a security interest under a security agreement with the entitlement holder or otherwise; and
 - b. Rights of the securities intermediary under other law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.
4. Sections 41-08-44 through 41-08-48 do not require a securities intermediary to take any action that is prohibited by other statute, regulation, or rule.

41-08-50. (8-510) Rights of purchaser of security entitlement from entitlement holder.

1. An action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.
2. If an adverse claim could not have been asserted against an entitlement holder under section 41-08-42, the adverse claim cannot be asserted

against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

3. In a case not covered by the priority rules in chapter 41-09, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Purchasers who have control rank equally, except that a securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

41-08-51. (8-511) Priority among security interests and entitlement holders.

1. Except as otherwise provided in subsections 2 and 3, if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.
2. A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.
3. If a clearing corporation does not have sufficient financial assets to satisfy both its obligations to entitlement holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders.

41-08-52. (8-603) Savings clause.

1. This Act does not affect an action or proceeding commenced before this Act takes effect.
2. If a security interest in a security is perfected at the date this Act takes effect and the action by which the security interest was perfected would suffice to perfect a security interest under this Act, no further action is required to continue perfection. If a security interest in a security is perfected at the date this Act takes effect but the action by which the security interest was perfected would not suffice to perfect a security interest under this Act, the security interest remains perfected for a period of six months after the effective date and continues perfected thereafter if appropriate action to perfect under this Act is taken within that period. If a security interest is perfected at the date this Act takes effect and the security interest can be perfected by filing under this Act, a financing statement signed by the secured party instead of the debtor may be filed within that period to continue perfection or thereafter to perfect.

¹⁵ **SECTION 8. AMENDMENT.** Subsection 6 of section 41-09-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. ~~Uncertificated securities. The law, including the conflict of laws rules, of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or nonperfection of a security interest in uncertificated securities. Investment property:~~
- a. This subsection applies to investment property.
 - b. Except as otherwise provided in subdivision f, during the time that a security certificate is located in a jurisdiction, perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby are governed by the local law of that jurisdiction.
 - c. Except as otherwise provided in subdivision f, perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security are governed by the local law of the issuer's jurisdiction as specified in subsection 4 of section 41-08-10.
 - d. Except as otherwise provided in subdivision f, perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account are governed by the local law of the securities intermediary's jurisdiction as specified in subsection 5 of section 41-08-10.
 - e. Except as otherwise provided in subdivision f, perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account are governed by the local law of the commodity intermediary's jurisdiction. The following rules determine a "commodity intermediary's jurisdiction" for purposes of this subdivision:
 - (1) If an agreement between the commodity intermediary and commodity customer specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.
 - (2) If an agreement between the commodity intermediary and commodity customer does not specify the governing law as provided in paragraph 1, but expressly specifies that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

¹⁵ Section 41-09-03 was also amended by section 4 of Senate Bill No. 2098, chapter 358.

- (3) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in paragraph 1 or 2, the commodity intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the commodity customer's account.
- (4) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in paragraph 1 or 2 and an account statement does not identify an office serving the commodity customer's account as provided in paragraph 3, the commodity intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the commodity intermediary.
- f. Perfection of a security interest by filing, automatic perfection of a security interest in investment property granted by a broker or securities intermediary, and automatic perfection of a security interest in a commodity contract or commodity account granted by a commodity intermediary are governed by the local law of the jurisdiction in which the debtor is located.

¹⁶ **SECTION 9. AMENDMENT.** Section 41-09-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-09-05. (9-105) Definitions and index of definitions.

1. In this chapter unless the context otherwise requires:
 - a. "Account debtor" means the person who is obligated on an account, chattel paper, or general intangible.
 - b. "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods;¹ but a charter or other contract involving the use or hire of a vessel is not a chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper.
 - c. "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold.
 - d. "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not ~~he~~ the person owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the chapter dealing with

¹⁶ Section 41-09-05 was also amended by section 1 of Senate Bill No. 2142, chapter 360, and section 6 of Senate Bill No. 2098, chapter 358.

the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires.

- e. "Deposit account" means a demand, time, savings, passbook, or like account maintained with a bank, savings and loan association, credit union, or like organization, other than an account evidenced by a certificate of deposit.
- f. "Document" means document of title as defined in the general definitions of chapter 41-01 (section 41-01-11), and a receipt of the kind described in subsection 2 of section 41-07-07.
- g. "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.
- h. "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (section 41-09-34), but does not include money, documents, instruments, investment property, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also include standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops.
- i. "Instrument" means a negotiable instrument (defined in section 41-03-04); ~~a certificated security (defined in section 41-08-02)~~, or any other writing that evidences a right to the payment of money and is not itself a security agreement or lease and is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment. The term does not include investment property.
- j. "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like.
- k. An advance is made "pursuant to commitment" if ~~the a~~ a secured party ~~has bound himself~~ binds itself to make it, whether or not a subsequent event of default or other event not within ~~his~~ a secured party's control has relieved or may relieve ~~him~~ it from ~~his~~ its obligation.
- l. "Secured party" means a lender, seller, or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement, or the like are represented by a trustee or other person, the representative is the secured party.
- m. "Security agreement" means an agreement which creates or provides for a security interest.
- n. "Transmitting utility" means any person primarily engaged in the railroad, or street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and

transmission of electricity, steam, gas or water, or the provision of sewer service.

2. Other definitions applying to this chapter and the sections in which they appear are:

- a. "Account". Section 41-09-06.
- b. "Attach". Section 41-09-16.
- c. "Commodity contract". Section 41-09-15.
- d. "Commodity customer". Section 41-09-15.
- e. "Commodity intermediary". Section 41-09-15.
- f. "Construction mortgage". Subsection 1 of section 41-09-34.
- ~~e.~~ g. "Consumer goods". Subsection 1 of section 41-09-09.
- h. "Control". Section 41-09-15.
- ~~e.~~ i. "Equipment". Subsection 2 of section 41-09-09.
- f. j. "Farm products". Subsection 3 of section 41-09-09.
- ~~g.~~ k. "Fixture filing". Section 41-09-34.
- ~~h.~~ l. "Fixtures". Section 41-09-34.
- ~~i.~~ m. "General intangibles". Section 41-09-06.
- ~~j.~~ n. "Inventory". Subsection 4 of section 41-09-09.
- o. "Investment property". Section 41-09-15.
- ~~k.~~ p. "Lien creditor". Subsection 3 of section 41-09-22.
- ~~l.~~ q. "Proceeds". Subsection 1 of section 41-09-27.
- ~~m.~~ r. "Purchase money security interest". Section 41-09-07.
- ~~n.~~ s. "Real estate interest". Section 41-09-34.
- ~~o.~~ t. "United States". Section 41-09-03.

3. The following definitions in other chapters apply to this chapter:

- a. "Broker". Section 41-08-02.
- b. "Certificated security". Section 41-08-02.
- c. "Check". Section 41-03-04.
- d. "Clearing corporation". Section 41-08-02.

- ~~b.~~ e. "Contract for sale". Section 41-02-06.
- f. "Control". Section 41-08-06.
- g. "Delivery". Section 41-08-27.
- h. "Entitlement holder". Section 41-08-02.
- i. "Financial asset". Section 41-08-02.
- ~~e.~~ j. "Holder in due course". Section 41-03-28.
- ~~d.~~ k. "Note". Section 41-03-04.
- ~~e.~~ l. "Sale". Section 41-02-06.
- m. "Securities intermediary". Section 41-08-02.
- n. "Security". Section 41-08-02.
- o. "Security certificate". Section 41-08-02.
- p. "Security entitlement". Section 41-08-02.
- q. "Uncertificated security". Section 41-08-02.

4. In addition, chapter 41-01 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

¹⁷ **SECTION 10. AMENDMENT.** Section 41-09-06 of the North Dakota Century Code is amended and reenacted as follows:

41-09-06. (9-106) "Account" and "general intangibles" defined. "Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper whether or not it has been earned by performance. "General intangibles" means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, investment property, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts.

SECTION 11. A new section to chapter 41-09 of the North Dakota Century Code is created and enacted as follows:

(9-115) Investment property.

1. In this chapter:

¹⁷ Section 41-09-06 was also amended by section 7 of Senate Bill No. 2098, chapter 358.

- a. "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.
- b. "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or other contract that, in each case, is:
 - (1) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to the federal commodities laws; or
 - (2) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.
- c. "Commodity customer" means a person for whom a commodity intermediary carries a commodity contract on its books.
- d. "Commodity intermediary" means:
 - (1) A person who is registered as a futures commission merchant under the federal commodities laws; or
 - (2) A person who in the ordinary course of business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to the federal commodities laws.
- e. "Control" with respect to a certificated security, uncertificated security, or security entitlement has the meaning specified in section 41-08-06. A secured party has control over a commodity contract if by agreement among the commodity customer, the commodity intermediary, and the secured party, the commodity intermediary has agreed that it will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer. If a commodity customer grants a security interest in a commodity contract to its own commodity intermediary, the commodity intermediary as secured party has control. A secured party has control over a securities account or commodity account if the secured party has control over all security entitlements or commodity contracts carried in the securities account or commodity account.
- f. "Investment property" means:
 - (1) A security, whether certificated or uncertificated;
 - (2) A security entitlement;
 - (3) A securities account;
 - (4) A commodity contract; or
 - (5) A commodity account.

2. Attachment or perfection of a security interest in a securities account is also attachment or perfection of a security interest in all security entitlements carried in the securities account. Attachment or perfection of a security interest in a commodity account is also attachment or perfection of a security interest in all commodity contracts carried in the commodity account.
3. A description of collateral in a security agreement or financing statement is sufficient to create or perfect a security interest in a certificated security, uncertificated security, security entitlement, securities account, commodity contract, or commodity account whether it describes the collateral by those terms, or as investment property, or by description of the underlying security, financial asset, or commodity contract. A description of investment property collateral in a security agreement or financing statement is sufficient if it identifies the collateral by specific listing, by category, by quantity, by a computational or allocational formula or procedure, or by any other method, if the identity of the collateral is objectively determinable.
4. Perfection of a security interest in investment property is governed by the following rules:

 - a. A security interest in investment property may be perfected by control. A secured creditor that obtains control over any investment property to perfect a security interest as provided by this chapter, by virtue of that conduct alone, does not control a debtor for any purpose under the federal bankruptcy code [11 U.S.C.].
 - b. Except as otherwise provided in subdivisions c and d, a security interest in investment property may be perfected by filing.
 - c. If the debtor is a broker or securities intermediary, a security interest in investment property is perfected when it attaches. The filing of a financing statement with respect to a security interest in investment property granted by a broker or securities intermediary has no effect for purposes of perfection or priority with respect to that security interest.
 - d. If a debtor is a commodity intermediary, a security interest in a commodity contract or a commodity account is perfected when it attaches. The filing of a financing statement with respect to a security interest in a commodity contract or a commodity account granted by a commodity intermediary has no effect for purposes of perfection or priority with respect to that security interest.
5. Priority between conflicting security interests in the same investment property is governed by the following rules:

 - a. A security interest of a secured party who has control over investment property has priority over a security interest of a secured party who does not have control over the investment property.
 - b. Except as otherwise provided in subdivisions c and d, conflicting security interests of secured parties each of whom has control rank equally.

- c. Except as otherwise agreed by the securities intermediary, a security interest in a security entitlement or a securities account granted to the debtor's own securities intermediary has priority over any security interest granted by the debtor to another secured party.
 - d. Except as otherwise agreed by the commodity intermediary, a security interest in a commodity contract or a commodity account granted to the debtor's own commodity intermediary has priority over any security interest granted by the debtor to another secured party.
 - e. Conflicting security interests granted by a broker, a securities intermediary, or a commodity intermediary which are perfected without control rank equally.
 - f. In all other cases, priority between conflicting security interests in investment property is governed by subsections 5, 6, and 7 of section 41-09-33. Subsection 4 of section 41-09-33 does not apply to investment property.
6. If a security certificate in registered form is delivered to a secured party pursuant to agreement, a written security agreement is not required for attachment or enforceability of the security interest, delivery suffices for perfection of the security interest, and the security interest has priority over a conflicting security interest perfected by means other than control, even if a necessary endorsement is lacking.

SECTION 12. A new section to chapter 41-09 of the North Dakota Century Code is created and enacted as follows:

(9-116) Security interest arising in purchase or delivery of financial asset.

1. If a person buys a financial asset through a securities intermediary in a transaction in which the buyer is obligated to pay the purchase price to the securities intermediary at the time of the purchase, and the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary, the securities intermediary has a security interest in the buyer's security entitlement securing the buyer's obligation to pay. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected.
2. If a certificated security or other financial asset represented by a writing which in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment is delivered pursuant to an agreement between persons in the business of dealing with such securities or financial assets and the agreement calls for delivery versus payment, the person delivering the certificate or other financial asset has a security interest in the certificated security or other financial asset securing the seller's right to receive payment. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected.

¹⁸ **SECTION 13. AMENDMENT.** Subsection 1 of section 41-09-16 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Subject to the provisions of section 41-04-22 on the security interest of the collecting bank, ~~section 41-08-36.4~~ sections 11 and 12 of this Act on security interests in securities investment property, and section 41-09-13 on a security interest arising under the chapters on sales and leases, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless all of the following take place:
 - a. The collateral is in the possession of the secured party pursuant to agreement, the collateral is investment property and the secured party has control pursuant to agreement, or the debtor has signed a security agreement that contains a description of the collateral and, in addition, if the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned.
 - b. Value has been given.
 - c. The debtor has rights in the collateral.

¹⁹ **SECTION 14. AMENDMENT.** Subsection 4 of section 41-09-16 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. A transaction, although subject to this chapter, is also subject to chapters ~~40-48.1~~, 13-03, 35-05, 49-09, and 51-13, and in the case of conflict between the provisions of this chapter and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

SECTION 15. AMENDMENT. Subdivision d of subsection 1 of section 41-09-22 of the North Dakota Century Code is amended and reenacted as follows:

- d. In the case of accounts ~~and~~, general intangibles, and investment property, a person who is not a secured party and who is a transferee to the extent that ~~he~~ person gives value without knowledge of the security interest and before it is perfected.

SECTION 16. AMENDMENT. Subsection 1 of section 41-09-23 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A financing statement must be filed to perfect all security interests except the following:

¹⁸ Section 41-09-16 was also amended by section 1 of Senate Bill No. 2295, chapter 361, and section 14 of Senate Bill No. 2099, chapter 362.

¹⁹ Section 41-09-16 was also amended by section 1 of Senate Bill No. 2295, chapter 361, and section 13 of Senate Bill No. 2099, chapter 362.

- a. A security interest in collateral in possession of the secured party under section 41-09-26.
- b. A security interest temporarily perfected in instruments, certificated securities, or documents without delivery under section 41-09-25 or in proceeds for a ten-day period under section 41-09-27.
- c. A security interest created by an assignment of a beneficial interest in a trust or a decedent's estate.
- d. A purchase money security interest in consumer goods²¹, but filing is required for a motor vehicle required to be registered and fixture filing is required for priority over a conflicting real estate interest in a fixture to the extent provided in section 41-09-34.
- e. An assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor.
- f. A security interest of a collecting bank (section 41-04-22) or ~~in securities (section 41-08-36.1)~~ or arising under the chapters on sales and leases (section 41-09-13) or covered in subsection 3.
- g. An assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.
- h. A security interest in investment property which is perfected without filing under section 11 or 12 of this Act.

SECTION 17. AMENDMENT. Subsection 1 of section 41-09-24 of the North Dakota Century Code is amended and reenacted as follows:

1. A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. ~~Such~~ These steps are specified in sections 11 of this Act, 41-09-23, 41-09-25, 41-09-26, and 41-09-27. If ~~such~~ these steps are taken before the security interest attaches, it is perfected at the time when it attaches.

²⁰ **SECTION 18. AMENDMENT.** Section 41-09-25 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-09-25. (9-304) Perfection of security interest in instruments, documents, and goods covered by documents - Perfection by permissive filing - Temporary perfection without filing or transfer of possession.

1. A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments, other than ~~certificated securities~~ or instruments that constitute part of chattel paper, can be perfected only by the secured party's taking possession,

²⁰ Section 41-09-25 was also amended by section 2 of Senate Bill No. 2142, chapter 360, and section 8 of Senate Bill No. 2098, chapter 358.

except as provided in subsections 4 and 5 of this section and subsections 2 and 3 of section 41-09-27.

2. During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during that period is subject thereto.
3. A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.
4. A security interest in a negotiable document or ~~an instrument other than~~ a certificated security is perfected without filing or the taking of possession for a period of twenty-one days after it attaches to the extent that it arises for new value given under a written security agreement.
5. A security interest remains perfected for a period of twenty-one days without filing if a secured party having a perfected security interest in a negotiable document, ~~an instrument other than~~ a certificated security, or goods in possession of a bailee other than one who has issued a negotiable document therefor:
 - a. Makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to subsection 3 of section 41-09-33; or
 - b. Delivers the instrument or certificated security to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal, or registration of transfer.
6. After the twenty-one-day period in subsections 4 and 5, perfection depends upon compliance with applicable provisions of this chapter.

²¹ **SECTION 19. AMENDMENT.** Section 41-09-26 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-09-26. (9-305) When possession by secured party perfects security interest without filing. A security interest in letters of credit and advices of credit (subdivision a of subsection 2 of section 41-05-16), goods, instruments ~~other than certificated securities~~, money, negotiable documents, or chattel paper may be perfected by the secured party's taking possession of the collateral. If the collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of

²¹ Section 41-09-26 was also amended by section 3 of Senate Bill No. 2142, chapter 360, and section 9 of Senate Bill No. 2098, chapter 358.

the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this chapter. The security interest may be otherwise perfected as provided in this chapter before or after the period of possession by the secured party.

SECTION 20. AMENDMENT. Subsections 1 and 3 of section 41-09-27 of the North Dakota Century Code are amended and reenacted as follows:

1. "Proceeds" includes whatever is received upon the sale, exchange, collection, or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Any payments or distributions made with respect to investment property collateral are proceeds. Money, checks, deposit accounts, and the like are "cash proceeds". All other proceeds are "noncash proceeds".
3. The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless:
 - a. A filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds;
 - b. A filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; ~~or~~
 - c. The original collateral was investment property and the proceeds are identifiable cash proceeds; or
 - d. The security interest in the proceeds is perfected before the expiration of the ten-day period.

Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this chapter for original collateral of the same type.

SECTION 21. AMENDMENT. Section 41-09-30 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-09-30. (9-309) Protection of purchasers of instruments, documents, and securities. Nothing in this chapter limits the rights of a holder in due course of a negotiable instrument (section 41-03-28) or a holder to whom a negotiable document of title has been duly negotiated (section 41-07-30) or a bona fide protected purchaser of a security (section ~~41-08-18~~ 41-08-29) and those holders or purchasers take priority over an earlier security interest even though perfected. Filing under this chapter does not constitute notice of the security interest to those holders or purchasers.

SECTION 22. AMENDMENT. Subsections 1 and 7 of section 41-09-33 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. The rules of priority stated in other sections of this part and in the following sections shall govern when applicable: section ~~41-04-22~~ 41-04-26 with respect to the security interests of collecting banks in items being collected, accompanying documents, and proceeds; section 41-09-03 on security interests related to other jurisdictions; ~~and~~ section 41-09-14 on consignments; and section 11 of this Act on security interests in investment property.

7. If future advances are made while a security interest is perfected by filing, the taking of possession, or under section ~~41-08-36.1~~ on securities 11 or 12 of this Act on investment property, the security interest has the same priority for the purposes of subsection 5 or subsection 5 of section 11 of this Act with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases, a perfected security interest has priority from the date the advance is made.

SECTION 23. REPEAL. Chapters 10-18.1 and 41-08 of the North Dakota Century Code are repealed.

Approved April 1, 1997
Filed April 2, 1997

OCCUPATIONS AND PROFESSIONS

CHAPTER 363

HOUSE BILL NO. 1210

(Representatives Tollefson, Soukup, Thoreson, Coats)
(Senator Redlin)

BARBER FEES AND CONTINUING EDUCATION

AN ACT to create and enact a new section to chapter 43-04 of the North Dakota Century Code, relating to continuing education of barbers; and to amend and reenact sections 43-04-07 and 43-04-42 of the North Dakota Century Code, relating to the state board of barber examiners and fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-04-07 of the North Dakota Century Code is amended and reenacted as follows:

43-04-07. Compensation - Expenses - How paid. Each member of the board shall ~~is entitled to~~ receive ~~thirty dollars per day for actual services daily~~ compensation for actual services in an amount not to exceed sixty-two dollars and must ~~also~~ be paid ~~his~~ for actual expenses, as provided by law, incurred in attending meetings of the board and in ~~the performance of his performing~~ official duties. All funds collected or received by the board must be deposited and disbursed in accordance with section 54-44-12.

SECTION 2. AMENDMENT. Section 43-04-42 of the North Dakota Century Code is amended and reenacted as follows:

43-04-42. Fees. ~~The fees to be paid by an applicant are as follows~~

1. The board may charge applicants the following fees:
4. a. For examination ~~for~~ and issuance of a certificate to practice master barbering, ~~twenty~~ one hundred dollars.
2. ~~For issuance of such certificate, two dollars.~~
3. b. For examination ~~for~~ and issuance of a certificate to practice as an apprentice barber, ~~ten~~ fifty dollars.
4. ~~For issuance of such certificate, two dollars.~~
5. c. For renewal of a master barber's certificate, ~~thirty-five~~ fifty dollars.
6. d. For restoration of an expired master barber's certificate, a ten dollar penalty fee in addition to the regular renewal fee.
7. e. For renewal of an apprentice barber's certificate, twenty dollars.

8. f. For restoration of an expired apprentice barber's certificate, a ten dollar penalty fee in addition to the regular renewal fee.
9. g. For a permit to operate a barber school or college, an annual fee of one hundred twenty-five dollars.
10. h. For issuance of an annual barbershop license, ~~fifteen~~ thirty-five dollars, to be paid by each shopowner in advance.
11. i. For issuance of a certificate to an applicant who qualifies under section 43-04-38.1, one hundred twenty-five dollars.
12. j. For restoration of an expired barbershop license, a ten dollar penalty fee in addition to the annual license fee.
2. Each application to open or establish a barbershop in this state must be accompanied by a fee of fifty dollars to cover expenses of inspection, which must be retained by the board and deposited as other fees.
3. A duplicate license, certificate, or permit ~~will~~ must be issued upon the filing of:
- a. Filing a statement covering verified by the oath of the applicant which explains the loss of the same, verified by the oath of the applicant, and submitting;
- b. Submitting a signed photograph of the applicant; and the payment of
- c. Paying a fee of fifty cents ten dollars for the issuance of the duplicate. The board has the power to reduce renewal fees below the amounts heretofore set out in this section whenever the board determines that the full amount is not necessary to finance the necessary and regular operations of the board. Such reduction must be made by the board only by applying an equal percentage of reduction to all renewal fees provided for in this chapter, and such reduction must be made when commencing the licensing year and is in effect for the whole of such year.
4. Anyone ~~becoming~~ who becomes a member of the armed forces of the United States in time of war, while holding a license as a barber or apprentice, and while in good standing as to payment of fees, may obtain a certificate restoration ~~of his certificate~~ without payment of the restoration fee.

SECTION 3. A new section to chapter 43-04 of the North Dakota Century Code is created and enacted as follows:

Continuing education requirements.

1. The board may adopt rules establishing requirements for the continuing education of persons licensed under this chapter. Rules for accreditation of continuing education must allow accreditation for a variety of types of continuing education forums, including live presentations and correspondence education.

2. The board may suspend, revoke, place on probationary status, or refuse to renew any license issued under this chapter if the licensee fails to meet the continuing education requirements established by the board.
3. An applicant for accreditation of continuing education courses, classes, or activities may be charged a reasonable fee determined by the board.

Approved April 3, 1997

Filed April 3, 1997

CHAPTER 364**HOUSE BILL NO. 1239**

(Representative Keiser)
(Senator W. Stenehjem)

PODIATRIST LICENSING AND DISCIPLINE

AN ACT to amend and reenact subdivision o of subsection 1 of section 43-05-16, subsection 4 of section 43-05-16.1, and subsection 1 of section 43-05-16.5 of the North Dakota Century Code, relating to licensing and disciplining of podiatrists; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision o of subsection 1 of section 43-05-16 of the North Dakota Century Code is amended and reenacted as follows:

- o. Accepting, paying, or promising to pay a part of a fee in exchange for patient referrals; obtaining any fee by fraud, deceit, or misrepresentation; or ~~the payment or receipt~~ paying or receiving, directly or indirectly, ~~of~~ any fee, commission, rebate, or other compensation for services not actually or personally rendered, except for the lawful distribution of compensation or fees within a professional partnership, corporation, or association.

SECTION 2. AMENDMENT. Subsection 4 of section 43-05-16.1 of the North Dakota Century Code is amended and reenacted as follows:

4. Impose a civil penalty not exceeding ten thousand dollars for each violation, the amount of the civil penalty fixed so as to deprive the podiatrist of any economic advantage gained by the violation or to reimburse the board for attorney's fees and the cost of the investigation and proceeding.

SECTION 3. AMENDMENT. Subsection 1 of section 43-05-16.5 of the North Dakota Century Code is amended and reenacted as follows:

1. A person who has knowledge of any conduct constituting grounds for discipline under this chapter ~~may~~ shall report the violation to the board.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 5, 1997
Filed March 6, 1997

CHAPTER 365

HOUSE BILL NO. 1152

(Representative Carlson)

(At the request of the Secretary of State)

CONTRACTOR LICENSING

AN ACT to amend and reenact sections 43-07-02, 43-07-04, 43-07-09, 43-07-09.1, 43-07-10, 43-07-13, 43-07-14, 43-07-15, and 43-07-17 of the North Dakota Century Code, relating to licensing of contractors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-07-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-02. License required - Enjoining operation without license. No person may engage in the business nor act in the capacity of a contractor within this state when the ~~original contract or subcontract~~ cost, value, or price per job exceeds the sum of two thousand dollars without first having a license as provided in this chapter. The secretary of state may request the attorney general to bring an action to enjoin any person from engaging in the business or acting in the capacity of a contractor within this state when the ~~original contract or subcontract~~ cost, value, or price per job exceeds the sum of two thousand dollars, unless the person is properly licensed.

SECTION 2. AMENDMENT. Section 43-07-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-04. License - How obtained - Revocation. To obtain a license under this chapter, an applicant shall submit, on ~~such forms as the registrar shall prescribe~~ prescribes, an application under oath containing a statement of the applicant's experience and qualifications as a contractor. A copy of a certificate of insurance indicating liability coverage as proof that the applicant has secured liability insurance, must be filed with the application and the contractor shall submit a statement from the North Dakota workers compensation bureau that the contractor has secured workers' compensation coverage satisfactory to the bureau along with such other information as may be required by the registrar to assist the registrar in determining the applicant's fitness to act in the capacity of a contractor. The application must contain a statement that the applicant desires the issuance of a license under this chapter, and must specify the class of license sought. No sooner than ten days after sending written notice to a contractor at the contractor's last known address, the registrar shall use procedures of chapter 28-32 to revoke the license of any contractor who fails to ~~maintain~~:

1. Maintain liability insurance coverage required by this section or by section 43-07-10; ~~or who fails to file;~~
2. File, renew, or properly amend any fictitious name certificate required by chapter 45-11 ~~for any contractor.~~

Any person refused a license by the registrar or whose license is revoked pursuant to this section may appeal to the district court of Burleigh County, if a nonresident, or to the district court of the county of residence, if a resident of this state:

3. Maintain an active status of a corporation or registration as a foreign corporation;
4. Maintain an active status of a limited liability company or registration as a foreign limited liability company;
5. File or renew a trade name registration as required by chapter 47-25;
6. File or renew a limited liability partnership or foreign limited liability partnership as required by chapter 45-22; or
7. File or renew a limited partnership or foreign limited partnership.

SECTION 3. AMENDMENT. Section 43-07-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-09. Duty of registrar - Expiration of license. Within fifteen days from the date of application, the registrar may investigate and determine each applicant's fitness to act in the capacity of contractor as defined in this chapter, and no license may be issued to such applicant until the registrar receives all documentation necessary to obtain a license and the appropriate fee. The license issued on an original application entitles the licensee to act as a contractor within this state, subject to the limitations of such license, until the expiration of the then current fiscal year ending ~~February~~ March first.

SECTION 4. AMENDMENT. Section 43-07-09.1 of the North Dakota Century Code is amended and reenacted as follows:

43-07-09.1. Name changes. Not later than ten days after the date of a change in a contractor's name, the licensee must notify the registrar of the name change on a form provided by the registrar. A name change must be accompanied by a ten dollar fee. A licensee may not change its name if the change is associated with a change in the legal status other than a change in marital status. A corporation, limited liability company, limited liability partnership, or limited partnership registered with the secretary of state is not subject to this section.

SECTION 5. AMENDMENT. Section 43-07-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-10. Renewal of license - Time requirements - ~~Revocation~~ Invalidation of license for failure to renew. Any license issued under this chapter may be renewed for each successive fiscal year by obtaining from the registrar a certificate of renewal. To obtain a certificate of renewal, the licensee shall file with the registrar an application, which includes a listing of each project, contract, or subcontract obtained completed by the licensee during the preceding calendar year in this state over the amount of ten thousand dollars, the nature of the work ~~contracted of each project, contract, or subcontracted subcontract~~, and, if a performance bond was required ~~by the contract~~, the name and address of the corporation, limited liability company, or other person who issued the bond. The registrar shall within a reasonable time forward a copy of the list to the state tax commissioner. The applicant shall include with the application a copy of a certificate of insurance indicating liability coverage as proof that the applicant has secured liability

insurance, and a certification that the applicant has submitted all payroll taxes including North Dakota income tax, workers' compensation premiums, and unemployment insurance premiums due at the time of renewal, which documents need not be notarized. The application for a certificate of renewal must be made to the registrar on or before the first day of March of each year. At the time of filing the application for a certificate of renewal, the applicant shall pay to the registrar a renewal fee equal to twenty percent of the license fee established in section 43-07-07. If any contractor applies for a renewal under a class different from the license previously issued, the new class license may be issued upon the payment of the fee required for the issuance of the license of the class applied for. If any contractor fails to file an application for a certificate of renewal ~~when due, the registrar shall revoke by the March first deadline,~~ the contractor's license: ~~The registrar shall notify by mail a contractor whose license is revoked of the revocation within sixty days after the filing deadline is not in good standing and the contractor must be deemed to be unlicensed within the meaning of sections 43-07-02 and 43-07-18. Within sixty days after March first the contractor must be notified by mail that the contractor's license is not in good standing.~~ The contractor ~~may then renew the license within ninety days after the filing deadline~~ has until June first to renew by paying a penalty fee of seventy-five percent of the renewal fee, filing an application for a certificate of renewal, and paying the renewal fee. A contractor who applies for a certificate of renewal before or within ninety days of the filing deadline is not subject to the investigation authorized in section 43-07-09. ~~After the June first deadline any licenses not renewed are revoked.~~ Any application for a certificate of renewal must be fully completed within sixty days of the date the application is received by the registrar or it will be returned to the contractor who will then be subject to the provisions of section 43-07-09.

SECTION 6. AMENDMENT. Section 43-07-13 of the North Dakota Century Code is amended and reenacted as follows:

43-07-13. Records and certified copies thereof. The registrar shall maintain in ~~his~~ the registrar's office, open to public inspection during office hours, a complete indexed record of all applications ~~and all~~ licenses issued ~~and all~~ certificates of renewal ~~and of cancellations or suspensions, revocations, and other information maintained on contractors.~~ The registrar may dispose of an inactive contractor license, ~~cancellation, or suspension file~~ after two years if no attempts have been made to apply for a new license or renew the license. Disposal of the license will proceed according to the provisions of chapter 54-46. Before disposal and upon request, ~~he~~ the registrar shall furnish a certified copy of any license issued, ~~of any renewal certificate, or of the cancellation or suspension thereof,~~ information maintained upon receipt of the sum of ~~five ten~~ ten dollars. Such certified copy must be received in all courts and elsewhere as prima facie evidence of the facts stated therein.

SECTION 7. AMENDMENT. Section 43-07-14 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-14. Complaint for license ~~cancellation~~ revocation. Any person, including an employee or agent of the registrar, may file a duly verified complaint with the registrar charging that the licensee is guilty of one or more of the following acts or omissions:

1. Abandonment of any contract without legal excuse. A rebuttable presumption of abandonment arises if:

- a. A contractor fails to commence any work agreed upon in writing within sixty days of a starting date agreed upon in writing; or
 - b. A contractor fails to complete any work agreed upon in writing within ninety days of a completion date agreed upon in writing, unless the failure is due to circumstances beyond the control of the contractor.
2. Diversion of funds or property received under express agreement for the prosecution or completion of a specific contract under this chapter, or for a specified purpose in the prosecution or completion of any contract, and their application or use for any other contract obligation or purpose to defraud or deceive creditors or the owner.
 3. The doing of any fraudulent act by the licensee as a contractor in consequence of which another is injured in an amount exceeding the amount set forth in subsection 1 of section 27-08.1-01.
 4. The making of any false statement in any application for a license or renewal thereof.

The complaint must be on a form approved by the registrar and must set forth sufficient facts upon which a reasonable person could conclude that one or more of the above acts or omissions has been committed.

SECTION 8. AMENDMENT. Section 43-07-15 of the North Dakota Century Code is amended and reenacted as follows:

43-07-15. ~~Cancellation~~ Revocation of license - Appeal - Procedure. Upon the filing of such complaint, the registrar shall follow the procedures prescribed by chapter 28-32. A written complaint filed under section 43-07-14, which provides sufficient facts upon which a reasonable person could conclude that one or more of the acts or omissions set forth in section 43-07-14 has been committed, meets the requirements of subsection 1 of section 28-32-05. If the registrar determines that the licensee has been guilty of any of the acts or omissions charged, ~~he~~ the registrar shall cancel or suspend revoke the contractor's license. A contractor aggrieved by a decision of the registrar in ~~suspending or canceling his~~ revoking the contractor's license may appeal ~~such~~ the decision to the district court of ~~his~~ that person's county of residence or Burleigh County. Any licensee may not obtain a license under any name during the period of ~~cancellation or~~ revocation. A "licensee" whose license is ~~cancelled or~~ revoked includes any officer, director, agent, member, or employee of the licensee. The provisions of chapter 28-32 govern any appeal and proceedings hereunder.

SECTION 9. AMENDMENT. Section 43-07-17 of the North Dakota Century Code is amended and reenacted as follows:

43-07-17. ~~Cancellation~~ Revocation of license - Relicensing. A licensee whose license has been ~~cancelled~~ revoked may not be relicensed during the current calendar year in which the decision to ~~cancel~~ revoke the license was made.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 366

HOUSE BILL NO. 1384

(Representative Bernstein)
(Senator Heitkamp)

ELECTRICAL BOARD CIVIL PROCEEDINGS

AN ACT to amend and reenact sections 43-09-22 and 43-09-23 of the North Dakota Century Code, relating to the inspections of electrical installations and administrative actions by the state electrical board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-09-22 of the North Dakota Century Code is amended and reenacted as follows:

43-09-22. Inspection of installation - Condemnation. The board has jurisdiction over and shall provide inspection for all electrical installations. Inspectors authorized by the board may condemn installations hazardous to life and property ~~and~~ or may order specific corrections to be made. Inspectors may order service thereto discontinued. ~~Such action may not be taken except~~ after notice to the owner of the property ~~and~~. The order is subject to the owner's right of appeal to the board. No condemned installation may be reconnected for service until proof has been furnished that the installation has been brought up to the required standards. The board may charge the master electrician responsible for the installation a fee to cover the cost of inspection. Cities may make provisions for inspection of all electrical work done within their corporate limits. City inspectors shall register their names with the board within ten days after their appointment.

SECTION 2. AMENDMENT. Section 43-09-23 of the North Dakota Century Code is amended and reenacted as follows:

43-09-23. ~~Penalty~~ Criminal penalty - Civil proceedings. Any person who violates any of the provisions of this chapter is guilty of a class B misdemeanor. In addition to criminal proceedings, the board may commence administrative or civil court proceedings as follows:

1. The board may issue a cease and desist order against a person allegedly making or offering to make electrical installations in violation of section 43-09-09 or 43-09-09.2 based upon information provided to the board by its electrical inspectors or other persons, by investigation reports, affidavits, complaints of witnesses, or oral testimony given to the board at a regular or special board meeting. Violation of the cease and desist order may be considered by the court in issuing a temporary or permanent restraining order and in ordering the payment of costs and attorney's fees in proceedings authorized under this section.
2. The board may apply to the district court in the county in which the violations have occurred for a temporary or permanent injunction under chapter 32-06, enjoining persons from performing, advertising, or contracting for making electrical installations without a valid license issued by the board in violation of section 43-09-09 or 43-09-09.2. The court may not require a written undertaking, security, or bond as a basis

for issuing any temporary or permanent restraining order under this section unless the court specifically orders and states the basis for requiring the security. Upon a determination that a violation of section 43-09-09 or 43-09-09.2 has occurred, the court may assess against the defendants the actual costs incurred and reasonable attorneys' fees necessary for the investigation and court proceedings against the unlicensed person.

3. After an administrative hearing has been conducted by the board under chapter 28-32, an appeal from an order of the board or from the assessment of costs and attorneys' fees may be taken to the district court under chapter 28-32.

Approved March 26, 1997

Filed March 26, 1997

CHAPTER 367

SENATE BILL NO. 2136

(Industry, Business and Labor Committee)
(At the request of the State Board of Funeral Service)

FUNERAL PRACTICE AND LICENSING

AN ACT to create and enact eleven new sections to chapter 43-10 of the North Dakota Century Code, relating to funeral practice exceptions, limitations on licenses, registration of intern embalmers, and licenses to operate a crematorium; to amend and reenact sections 43-10-01, 43-10-02, 43-10-04, 43-10-05, 43-10-10, 43-10-11, 43-10-12, 43-10-13, 43-10-14, 43-10-15, 43-10-16, 43-10-19, 43-10-20, 43-10-22, 43-10-23, 43-10-24, and 43-10-25 of the North Dakota Century Code, relating to the powers of the state board of funeral service, licensure and regulation of funeral service practitioners, and disciplinary action of funeral service licensees; and to repeal sections 43-10-17 and 43-10-18 of the North Dakota Century Code, relating to state board of funeral service disciplinary hearings; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-10-01 of the North Dakota Century Code is amended and reenacted as follows:

43-10-01. Definition of board Definitions. Whenever the word "board" is As used in this chapter, unless the context otherwise requires; ~~it~~:

1. "Board" means the state board of funeral service.
2. "Crematorium" means a furnace or establishment for the cremation of corpses.
3. "Embalming" means preparing dead human bodies for final disposition or removal by the injection of antiseptic or preservative preparations into the skin, the blood vessels, or cavities of the body. The external application of antiseptic solution, taking charge of the remains of those dead of any communicable disease, preparing dead human bodies for shipment or holding oneself out to do any of the above acts by advertising or any other means.
4. "Final disposition" means the entombment, burial in a cemetery, or cremation of a dead human body.
5. "Funeral directing" means the care and disposal of the body of a deceased person; the preserving, disinfecting, and preparing, by embalming or otherwise, the body of a deceased person for funeral services, transportation to a point of final disposition, burial, or cremation; or arranging, directing, or supervising a funeral, memorial service, or gravesite service.
6. "Funeral establishment" means any place or premises devoted to or used in the holding, care, or preparation of a dead human body for final

disposition or transportation or for mourning or funeral ceremony purposes.

7. "Funeral practitioner" means a person licensed by the board to practice funeral directing and embalming.
8. "Intern embalmer" means a person registered with the board to engage in learning the practice of embalming under the instruction and personal supervision of a duly licensed funeral practitioner.
9. "Practice of funeral service" means to engage in funeral directing or embalming.
10. "Preparation of the body" means embalming of the body or such items of care as washing, disinfecting, shaving, positioning of features, restorative procedures, care of hair, application of cosmetics, dressing, and casketing.

SECTION 2. AMENDMENT. Section 43-10-02 of the North Dakota Century Code is amended and reenacted as follows:

43-10-02. State board of funeral service - Members - Appointment - Qualifications - Term of office - Oath - Vacancies - Removal. The board consists of the state health officer and three persons appointed by the governor. Each member appointed by the governor shall serve for a term of four years and until a successor is appointed and qualified. The terms of office of the appointed members expire on the thirtieth day of June and must be so arranged that only one expires in any one year. The appointed members of the board must be persons practicing embalming in this state and must have practiced for a minimum of three years in North Dakota. Each member shall qualify by taking the oath of office required of civil officers. The secretary of state may administer the oath and it must be filed in the office of the secretary of state. A vacancy on the board must be filled by appointment by the governor for the unexpired term. The governor may remove any member of the board for good cause.

SECTION 3. AMENDMENT. Section 43-10-04 of the North Dakota Century Code is amended and reenacted as follows:

43-10-04. Meetings of the board - Quorum. The board shall meet at least once a year, and may hold such special meetings as the proper and efficient discharge of its duties requires. Timely notice of all meetings must be given to every member of the board; ~~and to all applicants for licensure.~~ Three members constitute a quorum for the transaction of business.

SECTION 4. AMENDMENT. Section 43-10-05 of the North Dakota Century Code is amended and reenacted as follows:

43-10-05. Power of board to adopt rules for transaction of business - Seal - License fees. The board may:

1. Adopt rules to administer and carry out this chapter.
2. Adopt rules regulating the practice, supervision and instruction of intern embalmers.

3. Adopt rules relating to the professional conduct of funeral directors and intern embalmers.
4. 4. Adopt such rules for the transaction of its business and the management of its affairs as it deems expedient and proper to administer this chapter.
2. 5. Adopt and use a seal.
3. 6. Adopt rules requiring each funeral home, at the time of selection of merchandise and services from that funeral home, to disclose in writing to the person or persons making the selection:
 - a. The total price at retail of the merchandise and services selected and a listing of what merchandise and services are included within such total.
 - b. The price at retail of each item of supplemental service or merchandise requested.
 - c. The amount of cash advances to the extent that the advances are known or can be ascertained at the time of the selection.
 - d. The terms of payment for merchandise and services.
4. 7. Establish license and renewal fees for funeral service practitioners and funeral establishments within the limits imposed by this chapter.
8. Adopt rules regulating the operation of funeral establishments and crematoriums.
9. Appoint or employ persons to assist the board in carrying out its duties under this chapter.
10. Accept and investigate complaints relating to conduct governed by this chapter.
11. Issue subpoenas, examine witnesses, administer oaths, and investigate allegations of practices violating the provisions of this chapter.

SECTION 5. AMENDMENT. Section 43-10-10 of the North Dakota Century Code is amended and reenacted as follows:

43-10-10. License required. ~~No~~ A person may embalm a dead human body or not practice embalming or funeral service in this state unless that person is licensed by the board or under the direct supervision of a person licensed by the board registered with the board as an intern embalmer.

SECTION 6. A new section to chapter 43-10 of the North Dakota Century Code is created and enacted as follows:

Funeral practice - Exceptions.

1. Nothing in this chapter may be construed to prevent a person from doing work within the standards and ethics of that person's profession and calling, provided that the person does not represent to the public that the person is engaging in the practice of funeral service.

2. Nothing in this chapter may be construed to prevent embalming by commissioned medical officers in the armed forces of the United States or under the United States public health service while on active duty in a respective service.
3. This chapter does not prevent the transportation of a dead human body in accordance with other applicable state and federal laws.
4. This chapter does not prohibit ambulance or other emergency transportation of a dead human body.
5. This chapter does not prohibit members of the clergy from performing funeral and gravesite or memorial services.
6. This chapter does not prohibit individuals licensed in other states as embalmers or funeral directors from assisting a North Dakota licensed embalmer during disasters or special emergencies.
7. This chapter does not prohibit individuals employed by a funeral establishment from performing nonprofessional tasks or activities that do not require independent, professional judgment under the supervision of an individual licensed to practice funeral service.

SECTION 7. AMENDMENT. Section 43-10-11 of the North Dakota Century Code is amended and reenacted as follows:

43-10-11. Examination required - Application - Qualification. Any person who desires a license to practice ~~embalming, funeral directing, or preparing dead human bodies for burial~~ funeral service shall apply to the board on a form provided by the board and submit to an examination. The applicant shall submit with the application proof that the applicant has the following qualifications:

1. Is of good moral character.
2. Has such preliminary preparation and education as the rules of the board require.
3. Has completed a twelve-month internship in accordance with rules adopted by the board.

SECTION 8. AMENDMENT. Section 43-10-12 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-10-12. Examinations - Subjects covered - Written - Record. The examination for a license to practice funeral service ~~or preparing dead human bodies for burial or shipment~~ must be in writing and must cover the following subjects:

1. Anatomy.
2. Embalming.
3. Bacteriology.
4. Chemistry.
5. Pathology.

6. Mortuary management.
7. Restorative arts.
8. Rules of the state department of health and the board governing the practice of funeral service.
9. Other subjects that may be required by the board.

All examination papers must be kept on record by the board for a period of not less than three years.

SECTION 9. AMENDMENT. Section 43-10-13 of the North Dakota Century Code is amended and reenacted as follows:

43-10-13. License - When granted - Fee - Signed by majority of board - Nontransferable - Where displayed. The board shall grant a license to practice funeral service ~~or preparing dead human bodies for burial or shipment,~~ if the applicant:

1. Has the required qualifications;
2. Has passed the required examination; and
3. Has paid to the treasurer of the board a sum of not more than one hundred dollars, as established by the board.

The license must be signed by a majority of the board, be attested by the board's seal, and specify by name the person to whom it is issued. A license is nonassignable and nontransferable and must be displayed by the licensee in a conspicuous place in the licensee's office or place of business.

SECTION 10. AMENDMENT. Section 43-10-14 of the North Dakota Century Code is amended and reenacted as follows:

43-10-14. License by reciprocity. A licenseholder in good standing in another state maintaining a system and standard of examination equivalent to this state may be issued a license after passing a written examination on questions concerning laws and rules of this state, upon payment of a fee established by the board, and proof of good moral character.

SECTION 11. A new section to chapter 43-10 of the North Dakota Century Code is created and enacted as follows:

Limitations or qualifications placed on licensee. The board, if the facts support such action, may place reasonable limitations or qualifications on the right to practice funeral service or to operate a funeral establishment or crematory.

SECTION 12. AMENDMENT. Section 43-10-15 of the North Dakota Century Code is amended and reenacted as follows:

43-10-15. License - Term - Renewal - Fee for renewal. A license to practice funeral service ~~or preparing dead human bodies for burial~~ is valid for one year and may be renewed by the board upon the payment to the treasurer of the annual renewal fee before December thirty-first of each year. The amount of the fee may not exceed one hundred dollars. The board may refuse to renew a license for cause.

SECTION 13. A new section to chapter 43-10 of the North Dakota Century Code is created and enacted as follows:

Late renewal. A license that has been expired may be renewed at any time within three years after its expiration on filing an application for renewal on a form prescribed by the board and payment of the renewal fee in effect on the last regular renewal date. If the license is not renewed within thirty days after its expiration, the licensee shall pay a late fee determined by the board not to exceed one hundred fifty dollars. Renewal under this section is effected on the date on which the application is filed, on the date which the renewal fee is paid, or on the date on which the late fee, if any, is paid, whichever last occurs. A license that is not renewed within three years after its expiration may not be renewed thereafter.

SECTION 14. A new section to chapter 43-10 of the North Dakota Century Code is created and enacted as follows:

Issuance of duplicate licenses. Upon receipt of satisfactory evidence that a license or certificate has been lost, mutilated, or destroyed, the board may issue a duplicate license or certificate upon such terms and conditions as the board prescribes, and upon payment of a fee of ten dollars.

SECTION 15. A new section to chapter 43-10 of the North Dakota Century Code is created and enacted as follows:

Change of name. Any licensee desiring to change the name appearing on the licensee's license may do so by applying to the board and paying a fee of ten dollars.

SECTION 16. A new section to chapter 43-10 of the North Dakota Century Code is created and enacted as follows:

Intern embalmer - Application - Qualifications. The board shall issue a certificate of registration as an intern embalmer to each applicant who files an application upon a form and in a manner the board prescribes, accompanied by a fee not to exceed fifty dollars, and who furnished sufficient evidence to the board that the applicant:

1. Is at least eighteen years of age;
2. Is of good moral character;
3. Has completed an accredited four-year high school course of study and two years of accredited college or university studies; and
4. Has graduated from an accredited college of mortuary science.

SECTION 17. A new section to chapter 43-10 of the North Dakota Century Code is created and enacted as follows:

Certificate of registration - Term - Renewal - Fee for renewal. A certificate of registration as an intern embalmer is valid for one year and may be renewed by the board upon payment to the treasurer of the annual renewal fee before December thirty-first of each year. Registration may not be renewed more than three times. The board may refuse to renew registration for cause.

SECTION 18. AMENDMENT. Section 43-10-16 of the North Dakota Century Code is amended and reenacted as follows:

43-10-16. Grounds for revocation of license disciplinary action - Reimbursement of costs. The board may revoke, suspend, place on probation, or refuse to issue a license to practice funeral service or preparing dead human bodies for burial, cremation, or shipment if certificate of registration as an intern embalmer upon proof at a hearing that the applicant, licensee, or certificate holder:

1. Is unfit to practice funeral service.
2. Has violated this chapter or the rules of the board.

The board may impose a fee on any person or other legal entity subject to regulation under this chapter to reimburse the board for all or part of the costs of administrative actions resulting in disciplinary action, including the amount paid by the board for services from the office of administrative hearings, attorneys' fees, court costs, witness fees, staff time, and other expenses.

SECTION 19. A new section to chapter 43-10 of the North Dakota Century Code is created and enacted as follows:

Expiration of suspended license - Renewal. A suspended license is subject to expiration and must be renewed as provided in this chapter, but the renewal does not entitle the holder of the license, while it remains suspended and until it is reinstated, to engage in the activity to which the license relates.

SECTION 20. AMENDMENT. Section 43-10-19 of the North Dakota Century Code is amended and reenacted as follows:

43-10-19. Hearing - Revocation Appeals. A licensed funeral service practitioner against whom charges have been made under section 43-10-16 may appear before the board at the time and place of the hearing and refute the charges made against that person. A board member may administer oaths to witnesses. If after considering the facts and circumstances, the board has sufficient reason to believe that the licensee is guilty of the charges made against the licensee, it may revoke, suspend, or refuse to issue a license. Hearings regarding disciplinary action or denial of a license must be held under chapter 28-32. An appeal from the board's final decision may be taken in accordance with the provisions of section 28-32-15.

SECTION 21. A new section to chapter 43-10 of the North Dakota Century Code is created and enacted as follows:

Restoration of license after revocation. One year from the date of revocation, the former licensee may make application for initial licensure. In order to receive a new license, the applicant must satisfy the current requirements for licensure.

SECTION 22. AMENDMENT. Section 43-10-20 of the North Dakota Century Code is amended and reenacted as follows:

43-10-20. Penalty. A person practicing or representing oneself as practicing funeral service, or preparing the dead for burial or shipment in violation of this chapter, is guilty of a class B misdemeanor. In addition to the criminal penalty provided, the civil remedy of injunction is available to restrain and enjoin violations of any provision of this chapter without proof of actual damages sustained by any person and without the board being required to file an undertaking.

SECTION 23. AMENDMENT. Section 43-10-22 of the North Dakota Century Code is amended and reenacted as follows:

43-10-22. Licensure of funeral establishments. A person may not operate or manage a funeral establishment without a funeral establishment license issued by the board for each place of business. A Except for on tribal land, a funeral establishment may not be located on tax-exempt property. A person desiring to operate a funeral establishment shall submit an application for an annual license for each funeral establishment to the secretary or executive secretary of the board accompanied by a license fee for each establishment of not more than one hundred dollars, as established by the board. A person operating or managing a funeral establishment shall annually, on or before December first, submit an application for renewal of a license with a renewal fee of not more than one hundred dollars, as established by the board. A license is valid until the following January first, unless sooner revoked. An application must show that the funeral establishment has complied with all rules adopted by the board in regard to safety and sanitation and will be under the supervision of ~~a North Dakota~~ an individual licensed embalmer and to practice funeral director service. An applicant who has met these standards must be issued a license. In case of the death of an owner of a funeral establishment who leaves an established business as part or all of an estate, the board may issue a special renewable temporary license to the personal representative of the deceased person for the duration of the administration of the estate, but which may not exceed two years. The fee for the temporary license is the same as required for regular licenses.

SECTION 24. A new section to chapter 43-10 of the North Dakota Century Code is created and enacted as follows:

Display of license. The funeral establishment license issued by the board to a funeral establishment must be conspicuously displayed at the funeral establishment for which the license was issued.

SECTION 25. AMENDMENT. Section 43-10-23 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-10-23. Inspections - Hearings - Revocations - Appeal. The funeral establishment or that part of a funeral establishment in which is conducted or intended to be conducted any funeral service business, must be open at all times for inspection by the board or the state department of health. The board or agents employed by it and the state department of health may make such inspections as are necessary of facilities and equipment of funeral establishments to ensure compliance with safety and sanitary rules adopted by the board or any other rules or federal regulations pertaining to funeral service whenever either deems the inspection advisable. If, upon inspection, it is found that such rules are not complied with, the board shall notify the holder of the funeral establishment license and hold ~~hearings in the manner provided in sections 43-10-17, 43-10-18, and 43-10-19~~ a hearing. The board may subpoena witnesses, administer oaths, and take testimony. All proceedings under this section must be conducted in accordance with chapter 28-32. The board may, after a hearing, revoke, suspend, or refuse to issue or renew a license upon good cause. A person aggrieved by the action of the board may appeal to the district court of the county in which the person resides or the district court of Burleigh County in accordance with chapter 28-32.

SECTION 26. AMENDMENT. Section 43-10-24 of the North Dakota Century Code is amended and reenacted as follows:

43-10-24. Penalty. Any person willfully violating any of the provisions of sections 43-10-21 through 43-10-23, except rules and regulations promulgated under section 43-10-22, is guilty of a class B misdemeanor. Any person who willfully violates a rule or regulation promulgated under section 43-10-22 is guilty of an infraction.

SECTION 27. AMENDMENT. Section 43-10-25 of the North Dakota Century Code is amended and reenacted as follows:

43-10-25. Licensure of crematoriums. ~~After July 4, 1989, a~~ A person may not operate a crematorium without a license issued by the board. A person desiring to operate a crematorium shall submit an application for an annual license to the board. The license fee may not exceed one hundred dollars and must be the same as a funeral establishment license.

SECTION 28. A new section to chapter 43-10 of the North Dakota Century Code is created and enacted as follows:

Grounds for disciplinary action. The board may revoke, suspend, place on probation, or refuse to issue a license to operate a crematorium upon proof at a hearing that the applicant or licensee:

1. Is unfit to operate a crematorium.
2. Has violated this chapter or rules adopted by the board.

SECTION 29. REPEAL. Sections 43-10-17 and 43-10-18 of the North Dakota Century Code are repealed.

Approved April 9, 1997
Filed April 10, 1997

CHAPTER 368

HOUSE BILL NO. 1164

(Industry, Business and Labor Committee)
(At the request of the State Board of Cosmetology)

COSMETOLOGIST LICENSING AND REGULATION

AN ACT to amend and reenact sections 43-11-01, 43-11-02, 43-11-08, 43-11-11, 43-11-12, 43-11-17, 43-11-19, 43-11-20.1, 43-11-21, 43-11-23, 43-11-24, 43-11-26, 43-11-27, 43-11-28, 43-11-32, 43-11-33, 43-11-34, and 43-11-35 of the North Dakota Century Code, relating to licensure and regulation of cosmetologists and cosmetology salons.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-11-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-11-01. Definitions. In this chapter, unless the context or subject matter thereof otherwise requires:

1. "Board" means the state board of cosmetology.
2. "Cosmetology" means any one or combination of practices generally and usually heretofore and hereafter performed by and known as the occupation of beauty culturists or cosmeticians or cosmetologists or hairdressers, or of any other person holding him or herself out as practicing cosmetology by whatever designation and within the meaning of this chapter and in and upon whatever place or premises; and in particular cosmetology is defined and includes, but otherwise is not limited thereby, the following or any one or a combination of practices: arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work, upon the hair of any person by any means or with hands or mechanical or electrical apparatus or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, exercising, beautifying or similar work on the scalp, face, neck, arms, hands, bust or upper part of the body, or manicuring the nails of any person.
3. "Cosmetology salon" includes that part of any building wherein the occupation of a cosmetologist is practiced.
4. ~~"Demonstrator" means any person who possesses the qualifications of a cosmetologist and who is granted permission to promote a product or technique in this state for a limited time in accordance with rules adopted by the board.~~
5. "Esthetician" means a person who is licensed by the board to engage in the practice of skin care. An esthetician does not include a professional make-up artist trained in facial make-up application by a cosmetics company.

- ~~6.~~ 5. "Homebound" means any person who is ill, disabled, or otherwise unable to travel to a salon.
- ~~7.~~ 6. "Instructor" means any person of the age of eighteen years or more, who is a licensed cosmetologist, who teaches cosmetology or any practices taught in a duly registered school of cosmetology, and who has met the requirements of section 43-11-27 and has applied for and received an instructor's license.
- ~~8.~~ 7. "Manager-operator" means any person who has met the requirements of section 43-11-26 and has applied for and received a managing cosmetologist license.
- ~~9.~~ 8. "Manicuring" means the cleansing, cutting, shaping, beautifying, or massaging of the hands, feet, or nails of any person.
- ~~40.~~ 9. "Manicurist" means a person who is licensed by the board to engage in the practice of manicuring.
- ~~44.~~ 10. "Operator" means a person, not a student, who is licensed under the provisions of this chapter to engage in and follow any of the practices of a hairdresser or cosmetologist.
- ~~42.~~ 11. "School of cosmetology" means an establishment operated for the purpose of teaching cosmetology.
- ~~43.~~ 12. "Skin care" means the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, beautifying, or similar work on the scalp, face, neck, arms, hands, bust, or upper part of the body of any person.
- ~~44.~~ 13. "Student" means any person who is engaged in the learning or acquiring of any or all the practices of cosmetology and while so learning, performs or assists in any of the practices of cosmetology in any school registered or licensed and under the immediate supervision of an instructor licensed as such under this chapter.
- ~~45.~~ 14. "Student instructor" means a cosmetologist who is receiving instruction in teacher's training in a duly registered school of cosmetology.
- ~~46.~~ 15. "Tuition" means the total cost of a person's cosmetology studies, and does not include books or demonstration kits.

SECTION 2. AMENDMENT. Section 43-11-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-11-02. Exemptions from provisions of chapter. This chapter does not apply to:

1. Services in case of emergency.
2. Services provided by persons practicing cosmetology upon members of their immediate families.
3. Services by persons authorized under the laws of this state to practice medicine, surgery, dentistry, podiatry, osteopathy, or chiropractic a

person licensed by the state and working within the standards and ethics of that person's profession, if that person does not represent to the public that the person is a cosmetologist or manicurist.

4. Services by nurses, undertakers, and morticians lawfully engaged in the performance of the usual and ordinary duties of their vocation; ~~or by a licensed cosmetologist engaged in manicuring the nails of any person in a licensed barbershop.~~
5. Educational activities conducted in connection with any regularly scheduled meeting or any educational activities of any bona fide association of licensed cosmetologists, from which the general public is excluded. For purposes of this subsection a "bona fide association of cosmetologists" means any organization whose constitution, bylaws, or membership rules establish within said organization a class of membership consisting of licensed cosmetologists.
6. Services provided by retailers or their sales personnel trained in the demonstration of cosmetics application if the cosmetics are applied only with disposable applicators that are discarded after each customer demonstration. The board may adopt rules to ensure sanitary conditions for services provided under this exemption.
7. Services provided in a licensed hospital or a nursing home by a person practicing cosmetology on a volunteer basis without compensation or by a nurse's assistant.

SECTION 3. AMENDMENT. Section 43-11-08 of the North Dakota Century Code is amended and reenacted as follows:

43-11-08. Meetings of the board. The board shall meet at least twice each year ~~on the third Tuesday in January and July at times determined by the board.~~ The board ~~may meet at such other times and places as is necessary to conduct the official business of the board~~ shall publish annually the time and place of its regularly scheduled meetings. A majority of the members constitutes a quorum.

SECTION 4. AMENDMENT. Section 43-11-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-11-11. Sanitary rules - Practice outside salon. The board with the approval of the state department of health shall adopt sanitary rules necessary to prevent the creating and spreading of infectious and contagious diseases. A cosmetology salon must be at a fixed location ~~and must be separate from all other businesses and establishments~~ and may not be used for living or sleeping quarters. An operator may practice outside of the establishment under the direction and control of an owner or manager thereof under rules adopted by the board.

SECTION 5. AMENDMENT. Section 43-11-12 of the North Dakota Century Code is amended and reenacted as follows:

43-11-12. Persons to aid of board. The board may employ ~~or receive services from any person~~ a secretary, support staff, and other persons knowledgeable in cosmetology for conducting examinations, inspections, and investigations of persons regulated by this chapter. Any person employed by the board is entitled to receive ~~fifty dollars for each day employed in the actual discharge of official duties,~~ and expenses in the amounts payable under sections 44-08-04 and 54-06-09.

SECTION 6. AMENDMENT. Section 43-11-17 of the North Dakota Century Code is amended and reenacted as follows:

43-11-17. Licenses issued for schools of cosmetology, and cosmetology salons - Fee for annual registration. The board may issue an annual license for a school of cosmetology. The annual registration fee for a school must be determined ~~annually~~ by the board, as set forth in section 43-11-28. The board shall, after inspection and approval, issue a salon license, the annual fee for which must be determined ~~annually~~ by the board, as set forth in section 43-11-28.

SECTION 7. AMENDMENT. Section 43-11-19 of the North Dakota Century Code is amended and reenacted as follows:

43-11-19. Students - Registration. A student cosmetologist must:

1. ~~Be at least seventeen years of age~~ Adhere to the laws and rules regarding the practice of cosmetology;
2. ~~Be of good moral character;~~
3. Have educational qualifications equivalent to completion of four years of high school; and
4. 3. Have enrolled in a school of cosmetology and complied with the preliminary requirements thereof.

The names and qualifications of all students must be certified to the board by each school of cosmetology. The certification must be accompanied by a processing fee for each student in an amount as may be fixed by the board under section 43-11-28.

SECTION 8. AMENDMENT. Section 43-11-20.1 of the North Dakota Century Code is amended and reenacted as follows:

43-11-20.1. Refund of student tuition fees upon cancellation of course. Schools of cosmetology shall refund tuition and other charges paid by or on behalf of a student when written notice of cancellation is given by the student. Refunds must be made in accordance with the following schedule:

Term <u>Hours</u>	Tuition
Completed <u>Enrolled</u>	Retained
	By School
0.0% - 4.9%	20%
5% - 9.9%	30%
10% - 14.9%	40%
15% - 24.9%	45%
25% - 49.9%	70%
Over 50%	100%

Notice of this section, and of sections 43-11-20.2 and 43-11-20.3, must be posted in a conspicuous place in each school of cosmetology. The notice must be in a form and contain information as prescribed by the board. The board shall take action necessary to enforce this section and sections 43-11-20.2 and 43-11-20.3, including revocation of the license issued pursuant to section 43-11-17. This section does not prejudice the right of any student to commence a civil action against any school of cosmetology for breach of contract or fraud.

SECTION 9. AMENDMENT. Section 43-11-21 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-11-21. Operator's license - Examination required - Application - Examination - Fees. Each person who desires to secure an operator's license shall file with the secretary of the board a written application under oath on a form supplied by the board. The application must be accompanied by:

1. ~~A health certificate signed by a licensed physician;~~
2. Satisfactory proof of the educational ~~and moral~~ qualifications required of a student;
3. ~~2.~~ An examination fee ~~and kit rental fee~~ as may be fixed by the board pursuant to section 43-11-28;
4. ~~3.~~ Satisfactory proof that the applicant has completed the required training in a school of cosmetology; and
5. ~~4.~~ A fee for original licensure as required by section 43-11-28.

SECTION 10. AMENDMENT. Section 43-11-23 of the North Dakota Century Code is amended and reenacted as follows:

43-11-23. Examination. The examination of applicants for license to practice under this chapter must be conducted under rules prescribed by the board and must include both practical demonstrations and written or oral tests in reference to the practices for which a license is desired and in reference to related studies or subjects as the board may determine necessary for the proper and efficient performance of a practice. The board may require the practical portion of the examination be conducted by schools of cosmetology as part of graduation requirements. The examination may not be confined to any specific system or method and must be consistent with the practical and theoretical requirements of cosmetology.

SECTION 11. AMENDMENT. Section 43-11-24 of the North Dakota Century Code is amended and reenacted as follows:

43-11-24. Operator's license - When issued - Failure to pass examination - Reexamination - Retraining. An operator's license must be issued to any person who has:

1. Complied with section 43-11-21; and
2. Passed to the satisfaction of the board, the examination of applicants for a license to practice under this chapter.

If the applicant fails to pass the examination, the examination fee may not be returned. Within one year after failing to pass an examination, the applicant may be examined again with the payment of a reexamination fee ~~and kit rental fee~~ as set forth in section 43-11-28. ~~Anyone~~ A person who fails to pass the reexamination must complete an additional one hundred sixty hours of training at a school of cosmetology ~~prior to~~ before reapplying for examination.

SECTION 12. AMENDMENT. Section 43-11-26 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-11-26. Manager-operator - License - Qualifications. A person may obtain a manager-operator's license upon:

1. Furnishing to the board evidence of ~~being at least eighteen years of age and~~ having practiced as a licensed operator for at least one hundred twenty-five days;
2. Paying an original licensure fee ~~and examination fee~~ as set forth in section 43-11-28; and
3. ~~Passing an examination conducted by the board to determine fitness to practice as a manager-operator; and~~
4. ~~Complies~~ Complying with the other requirements of this chapter applicable to a manager-operator.

SECTION 13. AMENDMENT. Section 43-11-27 of the North Dakota Century Code is amended and reenacted as follows:

43-11-27. Instructor's license - Student instructor's license - ~~Demonstrator's~~ License - Registration - Qualifications.

1. No person may be licensed as an instructor of cosmetology unless the person furnishes the board the examination fee set forth in section 43-11-28 and evidence of having ~~attained the age of eighteen years and having~~ a general education equivalent to the completion of four years in high school. An applicant:
 - a. Shall have at least nine hundred sixty hours instructor's training in cosmetology in a school of cosmetology. In no event may more than two thousand sixty hours instructor's training be required for admission to examination. Under this subdivision the practical portion of the examination may be waived if the written examination is supplemented with video tapes of the applicant's teaching procedures;
 - b. Shall have at least one year's experience as an active practicing cosmetologist, supplemented by not less than four hundred eighty hours instructor's training in cosmetology in a school of cosmetology. In no event may more than six hundred hours instructor's training be requisite for admission for examination under this subdivision; or
 - c. Shall possess a current North Dakota license as a cosmetologist and shall have been actively engaged in the practice of cosmetology for at least three years prior to application for an instructor's license supplemented by not less than one hundred sixty hours instructor's training in cosmetology in a school of cosmetology. In no event may more than six hundred hours instructor's training be requisite for admission for examination under this subdivision. No instructor or student instructor may be permitted to practice cosmetology on a patron other than that part of practical work which pertains directly to the teaching of practical operations to students.
2. Student instructors in cosmetology must be registered upon enrollment in a school of cosmetology and upon certification by the school to the

board of the name, age, and qualifications of the student instructor which must be recorded in a register kept for that purpose. A student instructor shall, at the time of enrollment, possess a general education equivalent to the completion of four years in high school and hold a license as a cosmetologist. Upon completion of the course prescribed for student instructors, the student instructor shall make application on a form provided by the board and pay a fee as provided in section 43-11-28. The board shall thereupon cause the applicant to be examined for an instructor's license. The examination must be given by a special examining committee comprised of the board, assisted by one person designated by the board possessing the minimum qualifications entitling the person to instruct in an institution of higher learning and who shall examine the applicant in teaching procedures only. Upon successfully passing the examination the board shall issue an instructor's license to the applicant.

3. ~~No person may be licensed as a demonstrator unless the person is a licensed cosmetologist or shall file proof with the board of continuously practicing in another state as a cosmetologist for a period of at least two years prior to the date of the application for license as a demonstrator and shall pay an original license fee as set forth in section 43-11-28.~~
4. No person is entitled to renew an instructor's license unless the instructor has furnished to the board evidence of attendance at an approved seminar pursuant to requirements prescribed by the board.

SECTION 14. AMENDMENT. Section 43-11-28 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-11-28. Fees.

1. Fees to be paid by applicants for original registrations, original licenses, annual renewals, licenses issued upon reciprocity, and examinations as required under this chapter may not exceed the following amounts:

a. Original registrations, licenses, and annual renewals:	MAXIMUM FEE:
(1) Salons, original registration	\$ 75.00
(2) Salons, annual renewal	\$ 25.00
(3) School of cosmetology, original registration	\$500.00
(4) School of cosmetology, annual renewal	\$200.00
(5) Operator, original license	\$ 10.00
(6) Operator, annual renewal	\$ 10.00
(7) Manager-operator, original license	\$ 20.00
(8) Manager-operator, annual renewal	\$ 15.00
(9) Instructor, original license	\$ 30.00

(10)	Instructor, annual renewal	\$ 15.00
(11)	Demonstrators, original license	\$ 25.00
(12)	Demonstrators, annual renewal	\$ 15.00
(13)	Reciprocity license fee	\$100.00
(14)	Registration fee for student instructor	\$ 10.00
(15)	Duplicate license	\$ 5.00
(16)	Penalty fee for late renewal	\$ 10.00
(17)	Certification fee	\$ 15.00

b. Examinations:

(1)	Operator	\$ 20.00
(2)	Operator's kit rental fee	\$ 45.00
(3)	Manager-operator	\$ 20.00
(4)	Instructors	\$ 50.00
(5)	Instructor's kit rental fee	\$100.00
(6) (3)	Reexamination fee, operator's	
	(a) Practical	\$ 25.00
	(b) Written	\$ 15.00
(7)	Reexamination fee, manager-operator	\$ 20.00
(8) (4)	Reexamination fee, instructors	
	(a) Practical	\$ 50.00
	(b) Written	\$ 20.00

2. Fees are not prorated or returnable. The board may charge a ten dollar penalty for license renewal applications received after December thirty-first. The board may reduce a renewal fee from the maximum amount only if it the board applies an equal percentage of reduction to all renewal fees. The board shall sponsor an educational program for licenseholders to carry out the purposes of protecting the public health and safety and maintaining capable and skilled operators, manager-operators, and instructors. The board is directed to shall use such portion of the renewal fees as the board may determine for the purpose of providing the educational program.

SECTION 15. AMENDMENT. Section 43-11-32 of the North Dakota Century Code is amended and reenacted as follows:

43-11-32. Hearing may be held by any member Hearings. Any investigation, inquiry, or hearing, which the board may hold or undertake under the provisions of this chapter, may be held or undertaken by, or before, any member or members of the board, and the finding or order of such member or members must be deemed to be the finding or order of the board when approved and confirmed by it. All hearings must be conducted pursuant to chapter 28-32. For purposes of the hearing, the licensee or applicant is deemed to be the sole party in interest under section 28-32-08 and the provisions of section 28-32-05 apply only to the licensee.

SECTION 16. AMENDMENT. Section 43-11-33 of the North Dakota Century Code is amended and reenacted as follows:

43-11-33. Hearings - Board may subpoena witnesses - Fees - How paid. The board may require the attendance of witnesses and the production of books, records, and papers at any hearing or with reference to any matter which it has authority to investigate, and for that purpose may ~~require the secretary to~~ issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records, or papers. ~~The subpoena must be directed to the sheriff of the county where the witness resides or is found, and must be served and returned in the same manner as a subpoena in a criminal case.~~ The fees and mileage of the sheriff and witnesses must be the same as may be allowed in the court in criminal cases. Fees and mileage must be paid in the same manner as expenses of the board.

SECTION 17. AMENDMENT. Section 43-11-34 of the North Dakota Century Code is amended and reenacted as follows:

43-11-34. Appeal from actions of the board. An appeal may be taken from an action of the board under this chapter in refusing to grant, or in suspending or revoking a license, to the district court of the county of residence of the person who has been refused a license or whose license has been suspended or revoked. The appeal must be taken in accordance with the provisions of chapter 28-32.

SECTION 18. AMENDMENT. Section 43-11-35 of the North Dakota Century Code is amended and reenacted as follows:

43-11-35. Penalty. Any person who, without a license, willfully practices any of the occupations, maintains a school, or acts in any capacity, wherein a license is required by this chapter, is guilty of a class B misdemeanor.

Approved April 8, 1997
Filed April 8, 1997

CHAPTER 369**HOUSE BILL NO. 1232**

(Representative Kretschmar)

ADVANCED PRACTICE NURSE LICENSING

AN ACT to amend and reenact subsection 5 of section 43-12.1-09 of the North Dakota Century Code, relating to the licensing requirements for advanced practice registered nurses; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 43-12.1-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. An applicant for licensure as an advanced practice registered nurse who completed an advanced nursing education program and was licensed or certified in advanced practice by another state ~~prior to August 4, 1995~~ before January 1, 2001, or who completed an advanced nursing education program and was licensed or certified as a women's health care nurse practitioner by another state before January 1, 2007, may apply for and receive an advanced practice license if that person meets the requirements that were in place in this state at the time the applicant qualified for initial advanced practice licensure in that state.

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

Approved March 5, 1997
Filed March 6, 1997

CHAPTER 370

HOUSE BILL NO. 1334

(Representatives Gorder, Froseth, Christopherson)
(Senators Andrist, Kinnoin, Yockim)

OPTOMETRY PRACTICE AND LICENSING

AN ACT to create and enact a new subsection to section 43-13-13.3 of the North Dakota Century Code, relating to consultations with a licensed ophthalmologist; and to amend and reenact sections 43-13-01 and 43-13-22 of the North Dakota Century Code, relating to definitions and licenses in the practice of optometry.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-13-01 of the North Dakota Century Code is amended and reenacted as follows:

43-13-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the North Dakota state board of optometry.
2. "Diagnosis and treatment" means the determination, interpretation, and treatment of any visual, muscular, neurological, or anatomical anomaly of the eye which may be aided, relieved, or corrected through visual training procedures or through the use of lenses, prisms, filters, ophthalmic instruments, pharmaceutical agents, or combinations thereof, held either in contact with the eye, or in frames or mountings, as further authorized by this chapter. Laser therapy and the use of invasive surgery are not permitted under this chapter, except superficial foreign bodies may be removed and primary care procedures may be performed. ~~The treatment of glaucoma is not permitted under this chapter.~~
3. "Optometry" means a primary health care profession whose practitioners are engaged in the evaluation of disorders of the human eye and the examination, diagnosis, and treatment thereof, together with its appendages.
4. "Pharmaceutical agent" means diagnostic pharmaceutical agents or therapeutic pharmaceutical agents. The term ~~does not include~~ includes nonscheduled pharmaceutical agents, except for acetaminophen with thirty milligrams of codeine, that have ~~no~~ documented use in the treatment of ocular-related disorders or diseases; ~~oral cortico-steroids, and controlled substances,~~ as defined in ~~chapter 19-03.1.~~ As used in this subsection:
 - a. "Diagnostic pharmaceutical agents" means pharmaceutical agents administered for the evaluation and diagnosis of disorders of the human eye including anesthetics, mydriatics, myotics, cycloplegics, diagnostic dyes, diagnostic stains, and pharmaceutical agents to evaluate abnormal pupil responses.

- b. "Therapeutic pharmaceutical agents" ~~means~~ includes topically administered and prescribed pharmaceutical agents for treatment of ocular-related disorders or disease, locally administered pharmaceutical agents for primary eye care procedures, oral anti-infective agents, oral antihistaminic agents, and oral analgesics for the treatment of ocular-related disorders or diseases. The dispensing of therapeutic pharmaceutical agents is not permitted under this chapter.
5. "Practicing optometry" means:
- a. Displaying a sign or in any way advertising as an optometrist.
 - b. Employing any means for the measurement of the powers of vision or the adaptation of lenses for the aid thereof.
 - c. Engaging in any manner in the practice of optometry.

SECTION 2. A new subsection to section 43-13-13.3 of the North Dakota Century Code is created and enacted as follows:

After initiating treatment for primary open-angle glaucoma, the therapeutically certified optometrist shall consult with a licensed ophthalmologist within seventy-two hours. A treatment plan for each individual patient must be cooperatively identified in accordance with the currently accepted standard of care. In treating and managing glaucoma, if no progress is achieved in realizing the selected range of pressure considered unlikely to cause further optic nerve damage or resulting in further visual field loss, a referral must be made to a licensed ophthalmologist without delay.

SECTION 3. AMENDMENT. Section 43-13-22 of the North Dakota Century Code is amended and reenacted as follows:

43-13-22. License - When revoked. The board may revoke or suspend any license granted by it under the provisions of this chapter when it appears to the satisfaction of the majority of the members that the holder of the license:

1. Has violated any provisions of this chapter, the rules and regulations of the board, or committed an offense determined by the board to have a direct bearing upon a holder's ability to serve the public as an optometrist, or when the board determines, following conviction of a holder for any other offense, that the holder is not sufficiently rehabilitated under section 12.1-33-02.1;
2. Has ~~prescribed, sold, administered, or distributed, or given~~ any drug legally classified as a controlled substance or as an addictive or dangerous drug;
3. Has been addicted to the excessive use of intoxicating liquor or a controlled substance for at least six months immediately prior to the filing of the charges;
4. Is afflicted with any contagious or infectious disease;

5. Is grossly incompetent to discharge the holder's duties in connection with the practice of optometry;
6. Has employed fraud, deceit, misrepresentation, or fraudulent advertising in the practice of optometry; or
7. Is engaged in the practice of optometry by being directly or indirectly employed by any person other than one who holds a valid unrevoked license as an optometrist in this state and who has an actual legal residence within this state.

Any person whose license has been revoked or suspended may have the same reinstated upon satisfactory proof that the disqualification has ceased or that the disability has been removed and upon such conditions as established by the board.

Approved March 23, 1997
Filed March 24, 1997

CHAPTER 371**SENATE BILL NO. 2234**

(Senators Nalewaja, Kringstad, Thompson)
(Representatives Boucher, Henegar, Poolman)

DRUG ADMINISTRATION DEFINITION

AN ACT to amend and reenact subsection 1 of section 43-15-01 of the North Dakota Century Code, relating to the definition of administration as it relates to drugs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 43-15-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. ~~"Administer"~~ "Administration" means the direct application of a drug to the body of a patient. The term includes ~~the initial application of a drug for the purpose of teaching utilization of a drug and the emergency maintenance of a drug delivery device used in home infusion therapy by a qualified home pharmacist when nursing service is not available.~~ The term excludes the regular ongoing delivery of a drug to the patient in a health care setting and other parenteral administration of a drug.

Approved April 9, 1997

Filed April 10, 1997

CHAPTER 372

SENATE BILL NO. 2122

(Human Services Committee)

(At the request of the State Board of Medical Examiners)

PHYSICIAN LICENSING AND CONTINUING EDUCATION

AN ACT to create and enact a new subsection to section 43-17-02, sections 43-17-26.1, and 43-17-27.1 of the North Dakota Century Code, relating to persons exempt from licensure as a physician, physician license renewals and late fees, and continuing education for physicians; and to amend and reenact section 43-17-18 of the North Dakota Century Code, relating to license requirements for physicians.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 43-17-02 of the North Dakota Century Code is created and enacted as follows:

A person rendering fluoroscopy services as a radiologic technologist if the service is rendered under the supervision, control, and responsibility of a licensed physician and provided that the state board of medical examiners prescribes rules governing the conduct and supervision of radiologic technologists who provide those services.

SECTION 2. AMENDMENT. Section 43-17-18 of the North Dakota Century Code is amended and reenacted as follows:

43-17-18. Qualifications of applicant for license License requirements. An applicant for a license to practice medicine shall present evidence satisfactory to the board of the following qualifications:

1. Possession of the degree of doctor of medicine or doctor of osteopathy from a medical school located in the United States, its possessions or territories, or Canada, approved by the board or by an accrediting body approved by the board at the time the degree was conferred;
2. If the applicant is the graduate of a reputable medical or osteopathic college in the United States or Canada, successful completion of one year of postgraduate training approved by the board or by an accrediting body approved by the board;
3. If the applicant is a graduate of a medical or osteopathic college that has not been approved by the board or accredited by an accrediting body approved by the board at the time the degree or its equivalent was conferred, a certificate issued by the educational council for foreign medical graduates, proficiency in writing and speaking English, and the successful completion of three years of postgraduate training in a program approved by the board or by an accrediting body approved by the board. However, the board may license an applicant with one year of residency training in the United States or Canada who has been

approved for faculty status in psychiatry by the university of North Dakota and its medical school. The board may also grant a special license to an applicant who is a graduate of a foreign medical school, has successfully completed one year of approved postgraduate training in the United States or Canada, and is enrolled in a residency program in this state for the purpose of practicing medicine only within the scope of the residency training program. If an applicant has not completed three years of postgraduate training in a program approved by the board or by an accrediting body approved by the board, but has met all other licensing requirements and has successfully completed one year of postgraduate training in the United States or Canada in a program approved by the board, and if the board finds that the applicant has other professional experience and training that is substantially equivalent to the second and third year of postgraduate training, then the applicant may be deemed eligible for licensure. Three years of postgraduate training in the United Kingdom must be considered to be equivalent to one year of postgraduate training in the United States or Canada. The board is granted broad discretion in determining whether to apply this exception to the normal licensing requirements;

1. General - Every applicant for licensure shall file a written application on forms provided by the board, showing to the board's satisfaction that the applicant is of good moral character and satisfies all of the requirements of this chapter including:
 4. a. Successful completion of a medical licensure examination satisfactory to the board;
 5. b. Physical, mental, and professional capability for the practice of medicine in a manner acceptable ~~by~~ to the board; and
 6. c. A history free of any finding by the board, any other state medical licensure board, or any court of competent jurisdiction of the commission of any act ~~which~~ that would constitute grounds for disciplinary action under this chapter; the board, ~~in its discretion,~~ may modify this restriction for cause.
2. Graduates of United States and Canadian schools.
 - a. An applicant who is a graduate of an approved medical or osteopathic school located in the United States, its possessions, territories, or Canada, shall present evidence, satisfactory to the board, that the applicant has been awarded a degree of doctor of medicine or doctor of osteopathy from a medical school located in the United States, its possessions, territories, or Canada, approved by the board or by an accrediting body approved by the board at the time the degree was conferred.
 - b. An applicant who is a graduate of an approved medical or osteopathic school located in the United States, its possessions, territories, or Canada, must present evidence, satisfactory to the board, that the applicant has successfully completed one year of postgraduate training in the United States or Canada in a program approved by the board or by an accrediting body approved by the board.

3. Graduates of international schools.

- a. An applicant who is a graduate of a medical school not located in the United States, its possessions, territories, or Canada, shall present evidence, satisfactory to the board, that the applicant possesses the degree of doctor of medicine or a board-approved equivalent based on satisfactory completion of educational programs acceptable to the board. Graduates of osteopathic schools located outside the United States are not eligible for licensure.
- b. An applicant who has graduated from a medical school not located in the United States, its possessions, territories, or Canada, must present evidence, satisfactory to the board, that the applicant has successfully completed three years of postgraduate training in a program located in the United States, its possessions, territories, or Canada, and accredited by a national accrediting organization approved by the board or other graduate training approved in advance by the board as meeting standards similar to those of a national accrediting organization. However, if such an applicant has not completed three years of postgraduate training in a program approved by the board or by an accrediting body approved by the board, but has met all other licensing requirements and has successfully completed one year of postgraduate training in the United States or Canada in a program approved by the board, and if the board finds that the applicant has other professional experience and training that is substantially equivalent to the second and third year of postgraduate training, then the applicant may be deemed eligible for licensure. The board is granted broad discretion in determining whether to apply this exception to the normal licensing requirements. An applicant seeking licensure under this exception must present evidence satisfactory to the board that:
- (1) The applicant is certified by a specialty board recognized by the American board of medical specialties or by a specialty board recognized by the royal college of physicians and surgeons of Canada; or
- (2) The applicant has passed the special purpose examination developed by the federation of state medical boards of the United States.
- c. The applicant shall present evidence satisfactory to the board that the applicant has been awarded a certificate by the educational council for foreign medical graduates. The board may adopt rules establishing specific exceptions to this requirement.
- d. The applicant has a working ability in the English language sufficient to communicate with patients and physicians and to engage in the practice of medicine.

4. Special license - The board may grant a special license to an applicant who is a graduate of an international medical school if that applicant has met all requirements for licensure except those pertaining to postgraduate training if the applicant has successfully completed one

year of approved postgraduate training in the United States or Canada, and is enrolled in a residency program in this state. This special license is valid only for the purpose of practicing medicine within the scope of the residency training program.

SECTION 3. Section 43-17-26.1 of the North Dakota Century Code is created and enacted as follows:

43-17-26.1. License renewals - Late fees. A physician seeking to renew the annual registration who has failed to complete the annual registration process within the time specified by the state board of medical examiners must be assessed a fee equal to three times the normal annual registration fee, in addition to such other penalties as are authorized by law, if that physician is found to have been practicing medicine in this state after the physician's license expired. A physician who is not found to have been practicing medicine in this state may renew a license upon payment of the arrearage and meeting the other requirements of the board. However, a physician whose license lapsed more than three years before that physician petitioned the board for reinstatement must submit a new application for licensure, whether or not that physician has practiced medicine in this state since the physician's license was last current.

SECTION 4. Section 43-17-27.1 of the North Dakota Century Code is created and enacted as follows:

43-17-27.1. Continuing education requirements.

1. The board shall promote a high degree of competence in the practice of medicine by establishing rules requiring every physician licensed in the state to fulfill continuing education requirements. Compliance with these rules must be documented at such times and in such manner as is required by the board.
2. Before a license may be renewed, the licensee shall submit evidence to the board establishing that all continuing education requirements prescribed by the rules adopted by the board have been met.
3. The board may exempt a physician from the requirements of this section in accordance with rules adopted by the board.

Approved April 1, 1997
Filed April 2, 1997

CHAPTER 373

HOUSE BILL NO. 1135

(Political Subdivisions Committee)

(At the request of the Board of Medical Examiners)

MEDICAL EXAMINER DISCIPLINE

AN ACT to amend and reenact sections 43-17-31, 43-17-32.1, subsection 1 of section 43-17.1-05, and section 43-17.1-05.1 of the North Dakota Century Code, relating to grounds for disciplinary action, suspensions, complaints, and reports under the board of medical examiners; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-17-31 of the North Dakota Century Code is amended and reenacted as follows:

43-17-31. Grounds for disciplinary action. Disciplinary action may be imposed against a physician upon any of the following grounds:

1. The use of any false, fraudulent, or forged statement or document, or the use of any fraudulent, deceitful, dishonest, or immoral practice, in connection with any of the licensing requirements.
2. The making of false or misleading statements about the physician's skill or the efficacy of any medicine, treatment, or remedy.
3. The conviction of any misdemeanor determined by the board to have a direct bearing upon a person's ability to serve the public as a practitioner of medicine or any felony. A license may not be withheld contrary to the provisions of chapter 12.1-33.
4. Habitual use of alcohol or drugs.
5. Physical or mental disability materially affecting the ability to perform the duties of a physician in a competent manner.
6. The performance of any dishonorable, unethical, or unprofessional conduct likely to deceive, defraud, or harm the public.
7. Obtaining any fee by fraud, deceit, or misrepresentation.
8. Aiding or abetting the practice of medicine by an unlicensed, incompetent, or impaired person.
9. The violation of any provision of a medical practice act or the rules and regulations of the board, or any action, stipulation, condition, or agreement imposed by the board or the commission on medical competency.
10. The practice of medicine under a false or assumed name.

11. The advertising for the practice of medicine in an untrue or deceptive manner.
12. The representation to a patient that a manifestly incurable condition, sickness, disease, or injury can be cured.
13. The willful or negligent violation of the confidentiality between physician and patient, except as required by law.
14. The failure of a doctor of osteopathy to designate ~~his~~ that person's school of practice in the professional use of ~~his~~ that person's name by such terms as "osteopathic physician and surgeon", "doctor of osteopathy", "D.O.", or similar terms.
15. Gross negligence in the practice of medicine.
16. Sexual abuse, misconduct, or exploitation related to the licensee's practice of medicine.
17. The prescription, sale, administration, distribution, or gift of any drug legally classified as a controlled substance or as an addictive or dangerous drug for other than medically accepted therapeutic purposes.
18. The payment or receipt, directly or indirectly, of any fee, commission, rebate or other compensation for medical services not actually or personally rendered, or for patient referrals; this prohibition does not affect the lawful distributions of professional partnerships, corporations, limited liability companies, or associations.
19. The failure to ~~furnish the board, its investigators or representatives,~~ information legally requested by the board comply with the reporting requirements of section 43-17.1-05.1.
- ~~20.~~ 20. The failure to transfer medical records, except those relating to psychiatric treatment which ~~shall~~ must be governed by board rule, to another physician or to supply copies thereof to the patient or to ~~his or her~~ the patient's representative when requested to do so by the patient or ~~his or her~~ the patient's designated representative. A reasonable charge for record copies may be assessed.
- ~~24.~~ 20. A continued pattern of inappropriate care as a physician, including unnecessary surgery.
- ~~22.~~ 21. The use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine.
- ~~23.~~ 22. The prescribing, selling, administering, distributing, or giving to oneself or to one's spouse or child any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug.
- ~~24.~~ 23. The violation of any state or federal statute or regulation relating to controlled substances.
- ~~25.~~ 24. The imposition by another state or jurisdiction of disciplinary action against a license or other authorization to practice medicine based upon acts or conduct by the physician that would constitute grounds for

disciplinary action as set forth in this section. A certified copy of the record of the action taken by the other state or jurisdiction is conclusive evidence of that action.

- ~~26.~~ 25. The lack of appropriate documentation in medical records for diagnosis, testing, and treatment of patients.
- ~~27.~~ 26. The failure to properly monitor a physician assistant or an emergency medical technician.
- ~~28.~~ 27. The failure to furnish the board or the commission on medical competency, their investigators, or representatives, information legally requested by the board or the commission.

The board shall keep a record of all of its proceedings in the matter of suspending, revoking, or refusing licenses together with the evidence offered.

SECTION 2. AMENDMENT. Section 43-17-32.1 of the North Dakota Century Code is amended and reenacted as follows:

43-17-32.1. Temporary suspension - Appeal.

1. When, based on verified evidence, the board has ~~verified evidence that~~ probable cause requires to believe that the suspension of a physician's license is required to reasonably protect the public from imminent or critical harm, the board may order a temporary suspension ex parte.
2. An ex parte temporary suspension remains in effect for not more than sixty days, unless otherwise terminated by the board.
3. The board shall set the date of a full hearing for suspension or revocation of the physician's license for not later than sixty days from the issuance of the ex parte temporary suspension order. Within three days after the issuance of the ex parte suspension order the board shall serve the physician with a copy of the order along with a copy of the complaint and notice of the date set for the full hearing.
4. The physician may appeal the ex parte temporary suspension order prior to the full hearing. For purposes of appeal, the district court shall decide whether the board acted reasonably or arbitrarily. The court shall give priority to the appeal for prompt disposition thereof.

SECTION 3. AMENDMENT. Subsection 1 of section 43-17.1-05 of the North Dakota Century Code is amended and reenacted as follows:

1. All residents have the right to make or refer written complaints to the commission with reference to the acts, activities, or qualifications of any physician licensed to practice in this state, or to request that the commission review the qualifications of any physician to continue to practice in this state. Any person who, in good faith, makes a report to the commission on medical competency under this section is not subject to civil liability for making the report. For purposes of any civil proceeding, the good faith of any person who makes a report pursuant to this section is presumed. Upon receipt of any complaint or request, the commission shall conduct ~~such~~ the investigation as it deems necessary to resolve the matter as it deems appropriate. The

commission shall determine whether the physician has committed any of the grounds for disciplinary action provided for by section 43-17-31.

SECTION 4. AMENDMENT. Section 43-17.1-05.1 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-05.1. Reports to commission on medical competency - When required.

~~A physician, the state medical association and its components a physician assistant, or a fluoroscopy technologist, a health care institution in the state, a state agency, or a law enforcement agency in the state; or a court in the state having actual knowledge that a licensed physician, a physician assistant, or a fluoroscopy technologist may be medically incompetent, guilty of unprofessional conduct, or mentally or physically unable to safely engage in the practice of medicine have committed any of the grounds for disciplinary action provided by law or by rules adopted by the board shall promptly report that information in writing to the commission. A medical licensee or any institution from which the medical licensee voluntarily resigns or voluntarily limits the licensee's staff privileges shall report that licensee's action to the commission if that action occurs while the licensee is under formal or informal investigation by the institution or a committee of the institution for any reason related to possible medical incompetence, unprofessional conduct, or mental or physical impairment. Upon receiving a report concerning a licensee the commission shall, or on its own motion; the commission may, investigate any evidence that appears to show a licensee is or may be medically incompetent, guilty of unprofessional conduct, or mentally or physically incapable of the proper practice of medicine have committed any of the grounds for disciplinary action provided by law or by rules adopted by the board. Any person required to report under this section who makes a report in good faith may not be subject to criminal prosecution or civil liability for making the report. For purposes of any civil proceeding, the good faith of any person who makes a report pursuant to this section is presumed. A physician who obtains information in the course of a physician-patient relationship in which the patient is another physician is not required to report if the treating physician successfully counsels the other physician to limit or withdraw from practice to the extent required by the impairment. For purposes of this section, a person has actual knowledge if that person acquired the information by personal observation or under circumstances that cause that person to believe there exists a substantial likelihood that the information is correct. An agency or health care institution that violates this section is guilty of a class B misdemeanor. A physician, physician assistant, or radiology technologist who violates this section is subject to administrative action by the North Dakota state board of medical examiners as specified by law or by administrative rule.~~

Approved April 1, 1997
Filed April 2, 1997

CHAPTER 374

HOUSE BILL NO. 1148

(Representatives Wardner, Glassheim, Byerly)

ENGINEER AND SURVEYOR REGISTRATION

AN ACT to amend and reenact sections 43-19.1-18 and 43-19.1-22 of the North Dakota Century Code, relating to the registration of professional engineers and land surveyors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-19.1-18 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-18. Registration fees. The board shall establish registration fees for professional engineers, engineers-in-training, land surveyors, and land surveyors-in-training in the amount the board determines necessary to accomplish the purposes of the board as provided in this chapter; ~~but~~. The registration fees may not exceed the amount of fifty dollars for a one-year period or one hundred dollars for a two-year period. If the board denies the issuance of a certificate to an applicant, the fee paid may be retained as an application fee.

SECTION 2. AMENDMENT. Section 43-19.1-22 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-22. Expirations and renewals. Certificates of registration expire on ~~the last day of the month of December following thirty-first of the year of their issuance if registration is on an annual basis and of the year after their issuance if issued on a biennial basis,~~ and become invalid after that date unless renewed. ~~It is the duty of the~~ The secretary of the board shall notify every person registered under this chapter of the date of the expiration of ~~said~~ that person's certificate of registration and the amount of fee required for its renewal. ~~Such~~ The notice must be mailed to the registrant at ~~his~~ the registrant's last known address at least one month in advance of the expiration of ~~said~~ the registrant's certificate. Renewal may be effected at any time ~~prior to~~ before or during the month of December by the payment of a fee as established by the board, not to exceed the fees established in section 43-19.1-18. Renewal of an expired certificate may be effected under rules ~~promulgated~~ adopted by the board regarding requirements for reexamination and penalty fees.

Approved February 11, 1997

Filed February 11, 1997

CHAPTER 375

SENATE BILL NO. 2394

(Senator Tomac)

MASSAGE THERAPIST LICENSING

AN ACT to amend and reenact sections 43-25-03, 43-25-05, 43-25-07, 43-25-08, 43-25-09, 43-25-10, 43-25-11, 43-25-12, 43-25-13, and 43-25-18 of the North Dakota Century Code, relating to North Dakota board of massage and massage therapist licensure; and to repeal section 43-25-01 of the North Dakota Century Code, relating to massage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-25-03 of the North Dakota Century Code is amended and reenacted as follows:

43-25-03. Massage therapists to be ~~registered~~ licensed. ~~It is unlawful for any~~ A person or persons to engage ~~may not:~~

1. Engage in the practice or attempt to practice massage for a fee; or for a gratuity or to conduct or teach massage without a certificate of registration license issued pursuant to the provisions of under this chapter;

~~It is unlawful for any person or persons to operate;~~

2. Operate or conduct any a massage establishment ~~which does not conform to unless it meets the sanitary regulations herein contained, or which may be requirements of this chapter and any regulations adopted by the board; or to employ any person as an operator who does not hold a certificate of registration.~~

~~It is unlawful for any person or persons to practice;~~

3. Employ an unlicensed person to work as a massage therapist; or
4. Practice any branch of massage as defined in subsection 3 of section 43-25-02, whether for payment or free demonstration, without first being a registered licensed massage therapist under the provisions of this chapter, or without operating and maintaining a bona fide massage establishment, and without first paying a registration license fee to the board.

SECTION 2. AMENDMENT. Section 43-25-05 of the North Dakota Century Code is amended and reenacted as follows:

43-25-05. Board of massage - Terms. The governor shall appoint the ~~North Dakota~~ board of massage, to consist of three massage therapists who are ~~members of the North Dakota massage therapy association licensed in this state.~~ The members must be appointed for three years, staggered so that the term of one member expires each year, and each member shall hold office until that member's successor is appointed and qualified.

SECTION 3. AMENDMENT. Section 43-25-07 of the North Dakota Century Code is amended and reenacted as follows:

43-25-07. Requisites for application and examination - Subjects - Minimum passing grade - Fee for reexamination.

1. Any person who is eighteen years of age or more, a high school graduate, a bona fide resident of ~~the this~~ state of North Dakota for at least one month immediately preceding the application to take the examination, and of good moral character and temperate habits is entitled to apply to the secretary-treasurer of the board. ~~The person~~ An applicant is entitled to ~~be issued a certificate of registration as a massage therapist licensure~~ if the ~~person~~ applicant:
- ~~4.~~
 - a. Presents a diploma or credentials issued by a school of massage ~~approved by the American massage therapy association or shows that meets the applicant is an active member standards set by the board, which may not be less than the standards of the American massage therapy association.~~
 - ~~2.~~ b. Passes a reasonable demonstrative, oral, and written examination conducted by the board in the art of body massage by hand or with any mechanical or vibratory apparatus for the purpose of body massaging, reducing or contouring, the use of oil rubs, salt glow, hot and cold packs, tub, shower, heat lamps, and similar baths.
 - ~~3.~~ c. Pays the required fees ~~required, which.~~ These fees must accompany the application to the secretary-treasurer of the board.
2. An applicant must achieve a general average score in the examination of seventy-five percent in all subjects involved and no score of less than fifty percent in any one subject. Any applicant failing to pass the requirements is entitled to a reexamination within six months upon payment of an additional fee of fifty dollars or a lesser amount established by the board, but two reexaminations exhaust the privilege under the original application.
3. Conviction of an offense does not disqualify a person from ~~registration licensure~~ under this chapter unless the board determines ~~that~~ the offense has a direct bearing upon a person's ability to serve the public as a massage therapist or ~~that~~ the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 4. AMENDMENT. Section 43-25-08 of the North Dakota Century Code is amended and reenacted as follows:

43-25-08. Fee for ~~certificate of registration~~ license. The fee to be paid by an ~~applicant to determine fitness to receive a certificate of registration~~ license is one hundred fifty dollars or a lesser amount established by the board.

SECTION 5. AMENDMENT. Section 43-25-09 of the North Dakota Century Code is amended and reenacted as follows:

43-25-09. Certificate of registration - Recording - Displaying conspicuously License - Display - Renewal - Renewal fee. Each certificate of registration license must be conspicuously displayed at the place of practice and must be recorded in the

office of the clerk of the district court in any county where the ~~registered~~ licensed massage therapist practices within thirty days after issuance. On or before January first of each year, each ~~registered~~ licensed massage therapist shall pay to the secretary-treasurer of the board a renewal fee of one hundred dollars or a lesser amount established by the board. Attendance at postgraduate work of at least eighteen continuing education units a year as prescribed by the board is a further requirement for renewal of the ~~certificate~~ license. If the board reasonably believes a massage therapist is in ~~such a~~ physical condition ~~as to jeopardize~~ jeopardizing the health of those who seek relief from the massage therapist, the board may require the applicant to have a physical examination by a competent medical examiner. If the applicant has had or has any communicable disease sufficient to disqualify the applicant to practice massage in the state, the board shall deny a ~~certificate~~ license until the applicant furnishes due proof of being physically and mentally competent and sound. A holder of an expired ~~certificate of registration~~ license may within one year from the date of its expiration have the ~~certificate~~ license renewed upon payment of the required renewal fee and production of a new certificate of physical examination. All ~~certificate holders~~ licenseholders must be designated as ~~certified~~ licensed massage therapists and may not use any title or abbreviation without the designation "massage therapist".

SECTION 6. AMENDMENT. Section 43-25-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-25-10. Revocation of ~~certificates~~ license - Preferment of charges.

1. The ~~certificate of registration~~ license of a massage therapist may be revoked, suspended, or annulled upon any ~~one or more~~ of the following grounds:
 1. ~~That the registrant~~ The licensee is guilty of fraud in the practice of massage or fraud or deceit in ~~his~~ admission to the practice of massage.
 2. ~~That the registrant~~ The licensee has been convicted of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as a massage therapist, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1. The conviction of an offense includes conviction in any jurisdiction in the United States of any offense, which if committed within ~~the this~~ this state of ~~North Dakota~~ would constitute an offense under ~~the this state's~~ this state's laws ~~thereof~~.
 3. ~~That the registrant~~ The licensee is engaged in the practice of massage under a false or assumed name, or is impersonating another practitioner of a like or different name.
 4. ~~That the registrant~~ The licensee is addicted to the habitual use of intoxicating liquors, narcotics, or stimulants to ~~such an~~ the extent as ~~to incapacitate him or her for the performance of his or her~~ the licensee is incapacitated from performing the professional duties of a massage therapist.
 5. ~~That the registrant~~ The licensee is guilty of untrue, fraudulent, misleading, or deceptive advertising, ~~or that he or she~~ the licensee prescribes medicines, drugs, or vitamins, or ~~the licensee~~ the licensee infringes on any other licensed profession.

6. ~~f.~~ f. ~~That the registrant~~ The licensee is guilty of willful negligence in the practice of massage, or ~~has been~~ is guilty of employing, allowing, or permitting any ~~unregistered~~ unlicensed person to perform massage in ~~his or her~~ the licensee's establishment.
7. ~~g.~~ g. ~~That said registrant~~ The licensee has violated any ~~provisions~~ of this chapter.
8. 2. Any ~~registrant~~ licensee who does not renew ~~his or her registration~~ a massage therapist license for two consecutive years because of sickness or other reason, or because of absence from the state of ~~North Dakota~~, must take the examination as prescribed for an applicant to become a registered operator and ~~to~~ comply with all the provisions ~~hereof~~, of this chapter applicable to any applicant to become a ~~registrant~~ licensee.
3. Charges may be preferred by any person, or the board may on its own motion direct the executive officer of ~~said~~ the board to prefer ~~said~~ any charges. Any accusation may be filed with the secretary-treasurer of the board charging any ~~registered~~ licensed massage therapist with any of the offenses ~~herein~~ enumerated in this section. ~~Such accusation shall be in writing~~, An accusation must be signed by the accuser and verified under oath.

SECTION 7. AMENDMENT. Section 43-25-11 of the North Dakota Century Code is amended and reenacted as follows:

43-25-11. Provisions for hearing - Notice.

1. Whenever ~~such~~ accusations as ~~provided in~~ under section 43-25-10 are filed, the board shall set a day for hearing and the secretary-treasurer of the board shall transmit to the accused a ~~true~~ copy of ~~any and~~ all charges filed ~~with him~~ relating to ~~such~~ the accusations, and shall notify in writing the accused that on the day fixed for the hearing, which ~~shall~~ may not be less than ten days from the date of ~~such~~ notice, ~~he~~ the accused may appear or show cause if ~~any~~, why ~~his or her~~ certificate and the accused's license to practice massage in ~~the~~ this state of ~~North Dakota~~ should not be revoked, suspended, or annulled. For the purpose of ~~such~~ this type of hearing, the board may require by subpoena the attendance of witnesses, to administer oaths and hear testimony and receive evidence, either oral or documentary, for and against the accused, and ~~said~~ the accused ~~shall have~~ has the right at ~~said~~ the hearing to cross-examine the witnesses, to produce ~~witnesses in his~~ defense witnesses, and to appear personally or by counsel. The notice provided for in this section ~~shall~~ must be substantially in the following form:

To _____ ~~You are hereby notified that charges~~
charges have been filed with the secretary-treasurer of the North
 Dakota Board of Massage against you as a practicing
 _____ in the state of North Dakota; ~~a true~~. A
 (Massage Therapist)

copy of ~~such~~ the charges ~~being~~ is attached ~~hereto~~, and that ~~the~~ said.
 The board has fixed the ____ day of _____, ~~A.D.~~
 19____ at the hour of _____ o'clock _____ at _____ in
 _____ for a hearing on such charges, at which time and place

you are hereby notified to appear before the board, and show cause, if you can, why your certificate license to practice massage in the state of North Dakota should not be revoked, suspended, or annulled. At the same time and place the board will hear testimony and receive evidence, either oral or documentary, or both, for and against you relating to such the charges.

Dated at _____ this ____ day of _____ ~~A.D.~~, 19____.

Secretary-treasurer of the
North Dakota Board of Massage

2. ~~Such notice shall~~ Notice must be sent to the accused by registered ~~or certified~~ mail directed to ~~his the~~ the accused's last known mailing address, and the post-office registration receipt ~~thereof~~, signed by the accused or ~~his the~~ the accused's agent, ~~shall be is~~ is prima facie evidence of service of ~~such~~ notice.

SECTION 8. AMENDMENT. Section 43-25-12 of the North Dakota Century Code is amended and reenacted as follows:

43-25-12. Power of board to revoke, suspend, or annul ~~certificates~~ licenses. ~~The board may, upon~~ Upon satisfactory proof ~~made~~ that any ~~certificate holder has been licensee is~~ guilty of any of the charges preferred ~~against him or her~~, the board may revoke, suspend, or annul any ~~certificate license~~ to do business ~~issued hereunder~~ under this chapter, upon a two-thirds majority vote of the board. An appeal from the final decision of the board may be taken under chapter 28-32. Any person who practices massage after ~~his or her certificate has been revoked, suspended, or annulled~~ must be revocation, suspension, or annulment is deemed to have practiced massage without a ~~certificate license~~. However, at any time after six months from the date of conviction, the board may in the exercise of its reasonable discretion by a majority vote, issue a new ~~certificate license~~ to the person affected, restoring or conferring all rights and privileges of and pertaining to the practice of massage, but the fee must be the same as upon issuance of the original ~~certificate license~~.

SECTION 9. AMENDMENT. Section 43-25-13 of the North Dakota Century Code is amended and reenacted as follows:

43-25-13. Records to be kept by the secretary-treasurer of the board. The secretary-treasurer of the board shall keep a record book of the names of all persons to whom ~~certificates licenses~~ have been granted under this chapter, the ~~certificate license~~ number of each, the date of granting each ~~certificate license~~ and renewal, and other matters of record. Any official entry or a certificate of the absence of information, certified under the hand of the secretary-treasurer and the seal of the board, must be admitted as evidence in any of the courts of ~~the this state of North Dakota~~. The original books, records, and papers of the board must be kept at the office of the secretary-treasurer. The secretary-treasurer shall furnish to any person a copy of any ~~such~~ record, certified by the secretary-treasurer, upon payment of a fee of ten dollars plus twenty-five cents per page copied, the fee to belong to the secretary-treasurer. The secretary-treasurer shall prepare and submit to the governor ~~and to the North Dakota massage therapy association~~ a biennial report detailing income and expenses and a list of massage therapists ~~certified licensed~~.

SECTION 10. AMENDMENT. Section 43-25-18 of the North Dakota Century Code is amended and reenacted as follows:

43-25-18. Reciprocity. Any person who has been duly licensed in another state to practice massage ~~which~~ in a state that has and maintains a standard of practice, which is substantially the same as that maintained in this state, and who has been lawfully and continuously engaged in ~~such~~ this practice for two years or more immediately before filing ~~his or her~~ of an application to practice in this state, and who ~~shall submit~~ submits to the board a duly attested certificate from the examining board of the state in which ~~he or she~~ is registered, certifying to the fact of ~~his or her~~ registration and being a person of good moral character and of professional attainments, may upon paying a fee of thirty-five dollars be granted a certificate license to practice in this state without being required to take an examination; ~~provided,~~ however, ~~that~~ no certificate license may be issued to any applicant unless the state ~~or territory~~ from which the certificate is granted extends a like privilege to engage in the practice of massage as ~~defined in this chapter~~ within its borders to persons registered licensed under the provisions of this chapter, ~~to practice in this state removing to such~~ upon practicing in that other state. The board ~~has the power to~~ may enter ~~into~~ reciprocal relations with other states whose requirements are substantially the same as those ~~herein~~ provided in this chapter.

SECTION 11. REPEAL. Section 43-25-01 of the North Dakota Century Code is repealed.

Approved March 25, 1997
Filed March 26, 1997

CHAPTER 376

SENATE BILL NO. 2355 (Senator Kelsh)

VETERINARIAN LICENSING AND CONTINUING EDUCATION

AN ACT to create and enact two new sections to chapter 43-29 of the North Dakota Century Code, relating to examination, licensing, and continuing education requirements of veterinarians; to amend and reenact sections 43-29-01.1, 43-29-03, 43-29-06, 43-29-07, 43-29-09, 43-29-13, 43-29-14, 43-29-15, and 43-29-16 of the North Dakota Century Code, relating to veterinarians; and to repeal sections 43-29-08 and 43-29-12 of the North Dakota Century Code, relating to veterinary certificates of registration and definition of veterinary medicine.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-29-01.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-29-01.1. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Accredited or approved college of veterinary medicine" means any veterinary college or division of a university or college which offers the degree of doctor of veterinary medicine or its equivalent and which conforms to the standards required for accreditation or approval by the American veterinary medical association.
2. "Accredited program in veterinary technology" means any postsecondary educational program of two or more academic years that has fulfilled the essential criteria established by the committee on veterinary technician education and activities and approved by the American veterinary medical association house of delegates.
3. "Animal" means any animal other than a human being. The term includes a any mammal, bird, fish, and reptile, or fowl, whether wild or domestic, living or dead.
- ~~2.~~ 4. "Board" means the board of veterinary medical examiners.
5. "Certificate" means a certificate issued by the American veterinary medical association educational commission for foreign veterinary graduates, indicating the holder has demonstrated knowledge and skill equivalent to that possessed by a graduate of an accredited or approved college of veterinary medicine.
- ~~3.~~ 6. "Licensed veterinarian" means a person who is licensed by the board to practice veterinary medicine.

4. 7. "Licensed veterinary technician" means a person who has graduated from ~~a~~ an accredited program in veterinary technology program that is accredited according to the standards adopted by the American veterinary medical association's committee on veterinary technician education and activities, or an equivalent program as determined by the board, and who has passed an examination prescribed by the board.
8. "Practice of veterinary medicine" means to:
- a. Diagnose, treat, correct, change, relieve, or prevent animal disease, deformity, defect, injury, or other physical or mental conditions. The term includes the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthetic, or other therapeutic or diagnostic substance or technique, the use of any manual or mechanical procedure for testing for pregnancy, or for correcting sterility or infertility, or to render advice or recommendation with regard to any of the above.
 - b. Represent, directly or indirectly, publicly or privately, an ability and willingness to do an act described in subdivision a.
 - c. Use any title, word, abbreviation, or letter in a manner or under circumstances that induce the belief the person using the title, word, abbreviation, or letter is qualified to do any act described in subdivision a.
 - d. Apply principles of environmental sanitation, food inspection, environmental pollution control, animal nutrition, zoonotic disease control, and disaster medicine in the promotion and protection of public health.
9. "Veterinarian-client-patient relationship" means:
- a. The veterinarian has assumed the responsibility for making medical judgments regarding the health of an animal and the need for medical treatment, and the client, who is the owner or other caretaker, has agreed to follow the instruction of the veterinarian.
 - b. There is sufficient knowledge of the animal by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal. This means the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal by virtue of an examination of the animal, or by medically appropriate and timely visits to the premises where the animal is kept.
 - c. The practicing veterinarian is readily available for followup in the case of adverse reactions or failure of the regimen of therapy.
10. "Veterinary medicine" includes veterinary surgery, obstetrics, dentistry, chiropractic, acupuncture, and all other branches or specialties of veterinary medicine.

SECTION 2. AMENDMENT. Section 43-29-03 of the North Dakota Century Code is amended and reenacted as follows:

43-29-03. Officers of board - Seal - Meetings - Limitations on meetings - Examinations - Rules - Code of ethics - Inspection of facilities - Educational requirements - Reciprocity.

1. The ~~state board of veterinary medical examiners~~ shall elect a president and a secretary. The board shall have a ~~common~~ seal, and the president and the secretary ~~thereof~~ may administer oaths. ~~‡ The board shall hold meetings semiannually in the spring and fall of each year for the examination of candidates at a time and place specified by said the board. This~~ The board may hold ~~such any other meetings as meeting it may deem~~ determines necessary at ~~such the~~ time and place ~~as it shall designate~~ designates. No session of the board may exceed two days. A quorum of the board consists of two members and such quorum is sufficient to conduct the business and proceedings of the board ~~set forth in this chapter~~, except that any changes in the rules ~~and regulations~~ must be taken at a meeting at which all ~~of~~ the members are present.
2. The board is ~~hereby authorized and empowered to promulgate, revise, alter, amend, may adopt~~ and enforce reasonable rules, ~~regulations,~~ and orders ~~which that~~ it determines ~~in its discretion~~ to be necessary to the performance of its duties and the regulation of the practice of veterinary medicine; ~~to~~ establish standards for professional conduct, inspection of facilities, and educational requirements for renewal and granting of licenses; ~~to~~ prescribe forms for application for examination; ~~to~~ prepare and supervise examination of applicants for license to practice veterinary medicine; ~~to~~ obtain the services of professional examination agencies in lieu of its own preparation of such examinations; and ~~to~~ issue and revoke licenses as ~~hereinafter~~ provided in this chapter. All rules ~~so promulgated, revised, altered, or amended~~ must be submitted to the attorney general in accordance with chapter 28-32. ~~‡ approved, they must be printed and mailed to all licensed veterinarians practicing within this state.~~
3. The board may, in its discretion, enter ~~into~~ reciprocal agreements with the examining boards of other states and nations, governing the granting of licenses to practice veterinary medicine and surgery in ~~the this~~ state of ~~North Dakota~~ without the applicant taking a written examination. Under no circumstances, however, may any reciprocal agreement be entered ~~into~~ with the board of another state or nation unless the requirements for the granting of licenses in the other state or nation are on an equal or higher standard to the requirements of ~~North Dakota~~ this state. The board may prescribe by ~~regulation~~ rule any other terms or conditions to be contained in ~~any such the~~ agreements. The board shall determine the fee for license by reciprocity agreement ~~must be determined by the board~~.

SECTION 3. AMENDMENT. Section 43-29-06 of the North Dakota Century Code is amended and reenacted as follows:

43-29-06. Graduation from recognized school and certificate or permit from board required - Application for license. Only those persons who are graduates a graduate of the veterinary course offered in a veterinary school, college, or university recognized by the board, and who possesses a certificate ~~or permit~~ of registration issued by the state board of veterinary medical examiners which is in ~~full force and effect~~ may ~~hold themselves out or~~ engage in the practice of veterinary medicine, surgery, or dentistry, or any department thereof.

Any person qualified under the provisions of this chapter, desiring to begin the practice of veterinary medicine or veterinary surgery in the state of North Dakota, shall make application to said board for license to do so. Such application must be made at least thirty days prior to the meeting of the board. The board shall give public notice of the time and place for the examination.

SECTION 4. AMENDMENT. Section 43-29-07 of the North Dakota Century Code is amended and reenacted as follows:

43-29-07. Application for license - Fees for examination and registration - Fees not to be returned - Renewal fees - Certificate of registration - Roster of registered veterinarians - Change of address - Renewal of registration upon forfeiture
Display of certificate of registration.

1. Any person desiring a license to practice veterinary medicine in this state shall make written application for licensing to the executive secretary on forms provided for that purpose and shall pay in advance to the North Dakota veterinary medical examining board a fee of fifty dollars. Fees may not be returned, except by action of the board. If the license is granted, the licensee shall pay on or before the date set out in this section, for such time as the licensee shall continue practice, an annual registration fee as determined by the board, based on the financial needs of the board. The renewal registration fee must be paid by all licensed veterinarians.

All veterinarians actually engaged and employed as such by the state, county, city, or by any corporation, limited liability company, firm, or individual must be deemed to be practicing veterinary medicine and shall secure a state license or certificate of qualification issued by the board.

Each person licensed by the board shall on or before the first day of July of each calendar year be required to pay the annual renewal registration fee to the executive secretary. Before the first day of June of each calendar year the executive secretary of the board shall send a notice to each veterinarian who holds a license to practice veterinary medicine in the state, whether resident or not, at that person's last address, that the annual renewal registration fee is due on or before the first day of July.

The executive secretary of the board shall issue a certificate of registration upon the payment of the required fee and publish biennially for proper distribution a roster of all veterinarians registered in the state of North Dakota, as soon as the registration for each two-year period is completed. The application must show the applicant is a graduate of an accredited or approved college of veterinary medicine or the holder of a certificate. The application must also show the applicant is a person of good moral character and any other information and proof the board may require. The application must be accompanied by a fee in the amount established by the board. If the board determines an applicant possesses the proper qualifications, the board shall admit the applicant to the next examination. If the applicant is eligible for license without examination under section 43-29-07.2, the board may grant the applicant a license. If an applicant is found not qualified to take the examination or for a licensee without examination, the board shall immediately notify the applicant in writing of this finding and the grounds of this finding. An applicant found unqualified may request a hearing on the question of the applicant's qualifications.

2. Each veterinarian licensed by the board, whether a resident or not, shall notify the secretary of any change in that person's office address or employment within sixty days after ~~such~~ the change has taken place. Any person licensed to practice veterinary medicine after the fifteenth day of April, or any person issued a temporary permit to practice veterinary medicine after that date, is exempt from this requirement to pay the annual registration fee until the first day of July of the year following licensure.
3. Registration ~~must be deemed~~ is a condition precedent to the practice of veterinary medicine and surgery in this state, and a certificate of registration currently in effect must be on display at all times in the office of each veterinarian engaged in active practice.

~~Any person registered under this chapter who may have forfeited his registration by nonpayment of fees may renew the same within one year without examination by paying such fees.~~

~~The board may by rule waive the payment of the registration fee of a licensed veterinarian during the period when the veterinarian is on active duty in connection with any branch of the armed forces of the United States, not to exceed the term of three years or the duration of the national emergency, whichever last occurs.~~

SECTION 5. A new section to chapter 43-29 of the North Dakota Century Code is created and enacted as follows:

Examination - License without examination - Temporary permit.

1. The board shall hold at least two examinations a year and may hold additional examinations as necessary. A person desiring to take an examination shall apply at least thirty days before the date of the examination. The board shall adopt rules governing preparation, administration, and grading of examinations. Examinations must be designed to test the examinee's knowledge of and proficiency in the subjects and techniques commonly taught in veterinary schools. To pass the examination, the examinee must demonstrate scientific and practical knowledge sufficient to prove competency to practice veterinary medicine in the judgment of the board. An examinee must be tested by written examination, supplemented by any oral interview and practical demonstration the board determines necessary. The board may adopt and use the examination prepared by the national board examination committee. After each examination, the board shall notify each examinee of the result of the examination, and the board shall issue a license to each person who passed the examination. The board shall record each new license and issue a certificate of registration to each new licensee. Any person failing an examination must be admitted to any subsequent examination on payment of the application fee.
2. The board may issue a license without a written examination to a qualified applicant who furnishes satisfactory proof of graduation from an accredited or approved college of veterinary medicine, or holds a certificate, and who:
 - a. Has for the five years immediately before filing of the application been a practicing veterinarian licensed in a state having license

- requirements at the time the applicant was first licensed which were substantially equivalent to the requirements of this chapter;
- b. Has within the three years immediately before filing the application successfully completed the examinations provided by the national board of veterinary medical examiners; or
 - c. Currently holds a license to practice in at least one state, has active diplomat status in a specialty organization recognized by the American veterinary medical association, and whose practice is limited to the certified specialty in the state in which the specialist is licensed without examination.
3. The board may issue without examination a temporary permit to practice veterinary medicine in this state to:
- a. A qualified applicant for license pending examination, if the temporary permit expires the day after the notice of results of the first examination given after the permit is issued. A temporary permit may not be issued to an applicant who previously has failed the examination in this or any other state or a foreign country.
 - b. A nonresident veterinarian validly licensed in another state or a foreign country who pays the fee established and published by the board if the temporary permit is issued for a period of no more than sixty days and no more than one permit is issued to a person during each calendar year.
 - c. A senior veterinary student who practices in the office of and under the direct supervision of a licensed veterinarian. A temporary student permit may not exceed six months from its date of issuance and is granted without payment of a fee.

SECTION 6. A new section to chapter 43-29 of the North Dakota Century Code is created and enacted as follows:

License renewal - Continuing education requirements.

1. All licenses expire annually as of July first but may be renewed by registration with the board and payment of the registration renewal fee established by the board. On June first of each year, the board shall mail a notice to each licensed veterinarian that the licensee's license will expire as of July first and provide the licensee with a form for registration. The board shall issue a new certificate of registration to a person reregistering under this section. Any person who willfully or by neglect fails to renew a license and who practices veterinary medicine after the expiration of the license is practicing in violation of this chapter.
2. Any qualified person may renew an expired license within two years of the date of its expiration by making written application for renewal and paying the current renewal fee plus all delinquent renewal fees. After two years have elapsed since the date of expiration, a license may not be renewed, but the holder may make application for a new license and take the license examination. The board may by rule waive the payment of the registration renewal fee of a licensed veterinarian during the period when the veterinarian is on active duty with any branch of the

armed services of the United States, not to exceed the longer of three years or the duration of active duty.

3. The board may adopt rules establishing requirements for the continuing education of veterinarians and veterinary technicians. The board may refuse to renew or may suspend, revoke, or place on probationary status any license issued under this chapter upon proof the licensee has failed to meet the applicable continuing education requirements. Applicants for accreditation of continuing education courses, classes, or activities may be charged a reasonable fee determined by the board.

SECTION 7. AMENDMENT. Section 43-29-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-29-09. Permit to practice issued by executive secretary of board - Limited specialty license - Graduate veterinary technicians. Any person who desires to practice veterinary medicine, surgery, or dentistry may apply to the executive secretary of the board for a temporary permit to practice if the applicant possesses a degree or diploma showing the applicant to be a graduate of the veterinary course offered in a veterinary school, college, or university recognized by the board. Upon the payment of fifty dollars by the applicant, twenty-five dollars must be applied toward the examination fee and is forfeited if the applicant fails to appear at the next scheduled examination. No temporary permit may be issued to any applicant who has previously failed the examination. The executive secretary, if satisfied that the applicant is a qualified and a suitable person, and with the approval of the president of the board, shall issue a permit to practice until the next examination is offered by the board. The permit has the same force as a certificate from the board, but expires upon the adjournment of the next meeting of the board at which an examination is held.

A senior veterinary student who practices in the office of, and under the direct supervision of, a licensed veterinarian must obtain a temporary permit to practice veterinary medicine in this state. A temporary student permit may not exceed four months from its date of issuance and is granted without payment of a fee.

1. The board may issue a limited specialty license for the practice of that specialty in this state to a veterinarian, licensed in another state, who has passed a nationally recognized specialty board exam and who otherwise meets the qualifications to practice in this state. All limited specialty licenses regardless of when issued, expire on June thirtieth of each year and may be renewed in the discretion of the board. All veterinarians holding a limited specialty license are subject to this chapter during the term of the license. Fees for a limited specialty license are the same as for a regular license.
2. The board shall ~~may~~ adopt rules for the training, certification, and limits of activity for veterinary assistants and shall adopt rules for the licensing, training, certification, and limits of activity for veterinary technicians being trained and employed under the direct supervision and responsibility of a licensed veterinarian. All veterinary technicians must be registered with and subject to requirements established by the board.

SECTION 8. AMENDMENT. Section 43-29-13 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-29-13. Practices excepted from provisions of this chapter. The following persons may not be considered to be engaging in the practice of veterinary medicine in this state:

1. Those who administer to livestock, the title to which rests in themselves, or in their regular employer, except where the ownership of the animal was transferred to avoid the requirements of this chapter, or those who perform gratuitous services.
2. ~~Those~~ Anyone who ~~conduct experimentation~~ conducts experiments in scientific research in the development of methods, techniques, or treatment, directly or indirectly applicable to the problems of medicine, and who in connection ~~therewith~~ use with these activities uses animals.
3. ~~Those who are~~ Anyone who is a regular student in a legally chartered and recognized an accredited or approved college of veterinary medicine; ~~while in the performance of studies and acts performing duties or actions assigned by their instructors an instructor or working under the direct supervision of a licensed veterinarian during a school vacation period.~~
4. ~~Those who are~~ Anyone licensed in another state or nation when engaged in this state in consultation with veterinarians legally practicing herein; ~~providing such consultation does not exceed thirty days in any one year.~~
5. ~~Those who are senior students~~ A senior student who is in an approved school of veterinary medicine and who ~~shall obtain~~ obtains from the board a student permit to practice in the office and under the direct supervision of any veterinarian practicing within this state.
6. ~~Those who are employees~~ Any employee of the United States of America or the this state of ~~North Dakota~~ while in the performance of ~~their~~ duties as such employees.
7. ~~Those selling drugs, medicine, household remedies, or appliances at wholesale or retail and advising as to the use and purpose of such drugs, medicine, household remedies, or appliances.~~ Any merchant or manufacturer selling medicine, feed, an appliance, or any other product used in the prevention or treatment of animal diseases.
8. ~~Those who render auxiliary or supporting assistance under the responsible supervision of a North Dakota licensed veterinarian, such as veterinary aids, nurses, laboratory technicians, interns, or other employees of such licensed practitioners.~~ Any veterinary technician or other employee of a licensed veterinarian performing duties under the direction and supervision of the veterinarian responsible for the technician's or other employee's performance.
9. Any member of the faculty of an accredited college of veterinary medicine performing regular functions or a person lecturing or giving instructions or demonstrations at an accredited college of veterinary medicine or in connection with a continuing education course or seminar.
10. Any person selling or applying any pesticide, insecticide, or herbicide.

11. Any graduate of a foreign college of veterinary medicine who is in the process of obtaining a certificate and is performing duties or actions assigned by the graduate's instructors in an accredited or approved college of veterinary medicine.

SECTION 9. AMENDMENT. Section 43-29-14 of the North Dakota Century Code is amended and reenacted as follows:

43-29-14. Refusal, suspension, and revocation of license and certificate - Reinstatement and relicense.

1. The state board of veterinary medical examiners may ~~either~~ refuse to issue a license or ~~refuse to issue~~ a certificate of registration, or may suspend, or revoke a license and certificate of registration, upon any of the following grounds:
 1. a. Fraud or deception in procuring the license.
 2. b. ~~The publication or use of any untruthful or improper statement, or representation, with a view of deceiving the public, or any client or customer in connection with the practice of veterinary medicine advertising or solicitation that is false, misleading, or otherwise determined unprofessional under rules adopted by the board.~~
 3. c. Habitual intemperance in the use of intoxicating liquors, or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs.
 4. d. Immoral, unprofessional, or dishonorable conduct manifestly disqualifying the licensee from practicing veterinary medicine.
 5. e. ~~Gross malpractice, including failure to furnish to the board, upon written application by it, any report or information relating thereto. Incompetence, gross negligence, or other malpractice in the practice of veterinary medicine.~~
 6. f. ~~The employment~~ Employment of unlicensed persons to perform work ~~which~~ that under this chapter can lawfully be done only by persons licensed to practice veterinary medicine.
 7. g. Fraud or dishonest conduct in applying or reporting diagnostic biological tests, inspecting foodstuffs, or in issuing health certificates.
 8. h. Failure of the licensee to keep the premises and equipment used in the licensee's practice in a reasonably clean and sanitary condition; and failure to use reasonably sanitary methods in the practice of veterinary medicine.
 9. i. Violation of the rules ~~as duly promulgated~~ adopted by the board ~~in accordance with the law~~.
 10. j. Conviction of an offense determined by the board to have a direct bearing upon a persons ability to serve the public as a veterinarian, or when the board determines, following conviction of any offense, that a person is not sufficiently rehabilitated under section 12.1-33-02.1.

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 - k. Willful or repeated violations of any provisions of this chapter or any of the rules of rule adopted by the board.
 - l. Failure to report, as required by law, or making false report of, any contagious or infectious disease.
 - m. Cruelty to animals.
 - n. Revocation of a license to practice veterinary medicine by another state on grounds other than nonpayment of a registration fee.
 - o. The use, prescription, or sale of any veterinary prescription drug, or the prescription or an extra-label use of any over-the-counter drug in the absence of a valid veterinarian-client-patient relationship.
2. Any person whose license has been revoked may apply to the board for reinstatement and relicensure one year after the date of revocation. The board may reissue a license if the board is satisfied the applicant is qualified to practice veterinary medicine, meets the existing requirements for licensure, and will comply with the rules regarding the practice of veterinary medicine.

SECTION 10. AMENDMENT. Section 43-29-15 of the North Dakota Century Code is amended and reenacted as follows:

43-29-15. Hearing on charges Complaints - Appeal Investigations.

1. Any person may prefer charges on any of the grounds as set forth in subsections 4 to 11 of section 43-29-14 by filing file a written complaint with the board in writing a sworn statement setting forth the specific charges upon which the complaint is made. Upon receiving any such a complaint, the board shall give at least twenty days notice to the person complained about of the time and place for hearing thereon, together with a copy of the complaint filed, and after hearing all evidence and testimony presented thereon, the board has the power to revoke, or suspend for a limited time, the license and registration certificate of any registrant found guilty by the board of improper conduct on any of the grounds as set forth in subsections 4 to 11 of section 43-29-14. Any licensee whose license has been revoked by the board may within thirty days thereafter upon written notice to the board appeal to the district court in the county of the licensees residence for a hearing de novo of the charges on which his license was revoked. The licensee has the right at any such hearing to be represented by counsel, to call witnesses, and to cross-examine adverse witnesses. Any appeal regarding a limited specialty license must be made to the Burleigh County district court.

Any person whose license has been revoked may apply to the board for reinstatement and relicensure, and if the board is satisfied that such conduct will be discontinued may reissue a license to such person notify the veterinarian of the complaint and request a written response from the veterinarian. The board may adopt rules establishing a peer review committee for the purpose of investigating complaints and providing recommendations to the board. A veterinarian who is the subject of an investigation by the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any reasonable question raised by or on behalf of the board relating to the subject of the investigation and providing copies of records when reasonably requested by the board.

2. To pursue the investigation, the board may subpoena and examine witnesses and records, including medical records, copy, photograph, or take samples. The board may require the veterinarian to give statements under oath, to submit to a physical or psychological examination, or both, by a physician or other qualified evaluation professional selected by the board if it appears to be in the best interest of the public that this evaluation be secured. After review of the complaint, the veterinarian's response, and information obtained in the investigation, the board shall determine if there is a reasonable basis to believe the allegations are true and that the allegations constitute a violation of this chapter or the rules of the board. If the board determines there is a reasonable basis to believe the allegations are true and the allegations constitute a violation of this chapter or the rules of the board, the board shall take appropriate action. If a reasonable basis is not found by the board, the board shall notify the complaining party and the veterinarian in writing.

SECTION 11. AMENDMENT. Section 43-29-16 of the North Dakota Century Code is amended and reenacted as follows:

43-29-16. Proceedings on revocation or suspension of license - Appeals - Costs of prosecution - Disciplinary proceedings.

1. All proceedings relative to the issuance, revocation, or suspension of a license, or relative to reissuing a license which that has been revoked may only be held when a majority of the members of such board are present at such hearings, and throughout such hearings a stenographer must be present and take down the testimony and preserve a record of all proceedings at the hearing. The complaint, notice of hearing, proof of service of notice of hearing, which proof must show that such notice was personally served upon the party against whom the complaint is made, and all other documents in the nature of pleadings and written motions filed in the proceedings, and all written documents presented in evidence, and the transcript of testimony, and the findings of the board on such hearing, constitute the record of such proceedings. Either party to the action may require that any of the matters filed with the board be presented to the district court to whom the case is appealed de novo must be conducted pursuant to chapter 28-32. An appeal from the final decision of the board in any matter covered by this chapter may be taken to the district court of Burleigh County or the aggrieved party's county of residence in accordance with chapter 28-32.
2. In any order or decision issued by the board in which disciplinary action is imposed against a licensee, the board may direct the licensee to pay the board a sum not to exceed the reasonable and actual costs, including attorney's fees, incurred by the board in the investigation and prosecution of the case. When applicable, the licensee's license may be suspended until the costs are paid to the board.

SECTION 12. REPEAL. Sections 43-29-08 and 43-29-12 of the North Dakota Century Code are repealed.

Approved March 20, 1997
Filed March 20, 1997

CHAPTER 377

HOUSE BILL NO. 1134

(Industry, Business and Labor Committee)

(At the request of the Private Investigative and Security Board)

PRIVATE INVESTIGATOR LICENSING AND CONTINUING EDUCATION

AN ACT to create and enact a new section to chapter 43-30 of the North Dakota Century Code, relating to continuing education requirements for private investigative and security officers; and to amend and reenact sections 43-30-06, 43-30-10, 43-30-12, 43-30-13, and 43-30-16 of the North Dakota Century Code, relating to injunctive power of the private investigative and security board, disciplinary action, disciplinary hearing, and fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-30-06 of the North Dakota Century Code is amended and reenacted as follows:

43-30-06. License applications. Every person who desires to obtain a license shall apply to the board on applications prepared and furnished by the board. Each application must include the information required by the board and must be accompanied by the required fee. As a requirement of receiving a license, the board may require each applicant for certification to file a complete set of the applicant's fingerprints, taken by a law enforcement officer, and all other information necessary to complete a state and nationwide criminal history record check with the bureau of criminal investigation for state processing and filing with the federal bureau of investigation for federal processing. All costs associated with the background check and with obtaining and processing the fingerprints are the responsibility of the applicant. Criminal history records provided to the board pursuant to this section are confidential and closed to the public and may be used by the board for the sole purpose of determining an applicant's eligibility for licensure and obtaining documentation to support a denial of licensure.

SECTION 2. AMENDMENT. Section 43-30-10 of the North Dakota Century Code is amended and reenacted as follows:

43-30-10. Penalty - Injunction. Any person who violates this chapter or any person who falsely states or represents that the person has been or is an investigative officer or employed by an investigative or security officer or agency is guilty of a class B misdemeanor. In addition to the criminal penalties provided, the civil remedy of an injunction is available to restrain and enjoin violations of any provisions of this chapter, without proof of actual damages sustained by any person.

SECTION 3. AMENDMENT. Section 43-30-12 of the North Dakota Century Code is amended and reenacted as follows:

43-30-12. Revocation or refusal to renew Disciplinary action. The board may ~~either refuse to renew or may~~ suspend ~~or may~~, or revoke a license, or place on probationary status any licensee, or issue a letter of reprimand to any licensee, for any one or any combination of the following causes:

1. Fraud in obtaining a license.
2. Violation of this chapter or rules adopted which implement section 43-30-04.
3. If the holder of any license or a member of any copartnership, an officer of any corporation, or a manager of any limited liability company has been adjudged guilty of the commission of an offense determined by the board to have a direct bearing upon a holder's ability to serve the public as a private investigative or security agency, or if the board determines that, following conviction of any offense, the holder is not sufficiently rehabilitated under section 12.1-33-02.1.
4. Upon the disqualification or insolvency of the surety of the licenseholder.

The board may impose a fee on any person subject to regulation under this chapter to reimburse the board for all or part of the costs of administrative actions resulting in disciplinary action, including the amount paid by the board for services from the office of administrative hearings, attorney's fees, court costs, witness fees, staff time, and other expenses.

SECTION 4. AMENDMENT. Section 43-30-13 of the North Dakota Century Code is amended and reenacted as follows:

43-30-13. Notice and hearing on license revocation. The board may, upon its own motion, and shall, upon the verified complaint in writing of any person setting forth facts which, if proven, would constitute ~~grounds for refusal, suspension, or revocation, as herein set forth~~ a violation of this chapter or rules adopted by the board, investigate the actions of any person holding or claiming to hold a license. The board shall, before refusing to issue, suspending, ~~or~~ revoking ~~any license, at least ten days before the date set for the hearing, or taking any other licensure action,~~ notify in writing the applicant or holder of ~~such~~ the license of any charges made and shall afford the accused person an opportunity to be heard in person or by counsel in reference thereto. The written notice may be served by personal delivery to the accused person, or by registered mail to the place of business specified by the accused person in the person's last notification to the board. At the time and place fixed in the notice, the board shall proceed to hearing of the charges and both the accused person and the complainant must be accorded ample opportunity to present in person or by counsel, such statements, testimony, evidence, and argument as may be pertinent to the charges or to any defense thereto. The board may continue ~~such~~ the hearing from time to time.

SECTION 5. AMENDMENT. Section 43-30-16 of the North Dakota Century Code is amended and reenacted as follows:

43-30-16. Examination and license fees. The board may charge the following fees:

1. The fee to be paid by an applicant for an examination to determine the applicant's fitness to receive a license as a private investigator or a license to provide private security services is ~~fifty~~ one hundred dollars.
2. The fee to be paid by an applicant for the initial issuance or the renewal of a license as a private investigator or a license to provide private security services is one hundred fifty dollars.

3. The fee to be paid by an applicant to apply for a license to conduct a private security or detective agency is ~~fifty~~ one hundred dollars.
4. The fee for the issuance or the renewal of a license to conduct a private security or detective agency is ~~two~~ three hundred dollars.
4. ~~5.~~ The one-time fee to be paid by an applicant for the issuance of a private security training certificate is ~~five~~ twenty-five dollars.
5. ~~6.~~ The annual fee to be paid by an applicant for the issuance of an armed private security certificate is ~~five~~ twenty-five dollars.
6. ~~7.~~ The fee to be paid for the issuance of a duplicate license is ~~ten~~ twenty dollars.
8. The initial registration fee to provide private investigative service or private security service is twenty dollars. The fee for the renewal of a registration to provide private investigative service or private security service is five dollars.

SECTION 6. A new section to chapter 43-30 of the North Dakota Century Code is created and enacted as follows:

Continuing education requirements. The board may adopt rules establishing the requirements for the continuing education of persons licensed under this chapter. The board may refuse to renew, suspend, or revoke any license issued under this chapter or place on probationary status any licensee on proof that the licensee has failed to meet the applicable continuing education requirements. Applicants for accreditation of continuing education courses, classes, or activities may be charged a reasonable fee as determined by the board.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 378

SENATE BILL NO. 2113

(Human Services Committee)

(At the request of the Board of Psychologist Examiners)

PSYCHOLOGIST LICENSING AND DISCIPLINE

AN ACT to create and enact five new sections to chapter 43-32 of the North Dakota Century Code, relating to powers of the board of psychologist examiners, investigations, licensure renewal, and disciplinary hearings; to amend and reenact sections 43-32-01, 43-32-02, 43-32-03, 43-32-05, 43-32-08.1, 43-32-13, 43-32-14, 43-32-16, 43-32-19, 43-32-20, 43-32-21, 43-32-27, 43-32-29, and 43-32-30 of the North Dakota Century Code, relating to the board of psychologist examiners, licensure and regulation of psychologists, continuing education, and client records; and to repeal sections 43-32-18 and 43-32-28 of the North Dakota Century Code, relating to licensing of psychologists without examination and disciplinary hearings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-32-01 of the North Dakota Century Code is amended and reenacted as follows:

43-32-01. Definitions.

1. "Board" means the North Dakota state board of psychologist examiners.
2. "Practice of psychology" means the observation, description, evaluation, interpretation, ~~and~~ or modification of human behavior by the application of psychological principles, methods, and procedures for the purpose of preventing or eliminating symptomatic, maladaptive, or undesired behavior and ~~of~~ enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health, and mental health. The term includes psychological testing and the evaluation or assessment of personal characteristics, such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning; counseling, psychotherapy, and other therapeutic techniques based on psychological principles; diagnosis and treatment of mental and emotional disorder or disability, compulsive disorders, disorders of habit or conduct as well as of the psychological aspects of physical illness, accident, injury, or disability; and psychoeducational evaluation, therapy, remediation, and consultation. The term includes ~~the rendering of~~ providing psychological services to individuals, families, groups, and the public ~~and is without regard to~~ regardless of whether payment is received for services rendered.
3. "Psychologist" means an individual who is licensed under this chapter in the practice of psychology.
4. "Psychology resident" means an individual who has received from an accredited school or college a doctorate degree in a program of study substantially psychological in nature, and who is involved in supervised psychological employment.

5. "School or college" means any university or other institution of higher learning that is accredited by a regional accrediting association, offering a full-time graduate course of study in psychology.

SECTION 2. AMENDMENT. Section 43-32-02 of the North Dakota Century Code is amended and reenacted as follows:

43-32-02. State board of psychologist examiners - How appointed - Qualifications. The governor shall appoint a state board of psychologist examiners consisting of five members; ~~each of whom.~~ At least one member must be engaged primarily in providing service in psychology, and at least one member must be engaged primarily in teaching, training, or research in psychology. Each member must have the following qualifications:

1. Be a resident of this state.
2. ~~After the first five appointments, must be~~ Be a licensed psychologist licensed under this chapter.
3. ~~Has, at least five years prior to appointment,~~ Have received a doctorate degree in psychology from a school or college ~~as defined in this chapter at least five years before appointment.~~
4. ~~Has been~~ Have actively engaged in the practice of teaching or research of psychology for a ~~period of~~ at least five years.
5. ~~As to at least one member, is currently engaged primarily in rendering service in psychology and as to at least one member, is engaged primarily in teaching, training, or research in psychology.~~

SECTION 3. AMENDMENT. Section 43-32-03 of the North Dakota Century Code is amended and reenacted as follows:

43-32-03. Tenure of members - Vacancies and oath of office. ~~After the first five appointments, the~~ The term of office of each member of the board ~~must be~~ is three years and until ~~his~~ a successor is appointed and qualified. ~~The terms of the first members of the board expire as follows: one member, June 30, 1968; two members June 30, 1969; and two members June 30, 1970.~~ The governor shall fill all vacancies by appointment ~~but in.~~ In case of a vacancy before the expiration of a term, the appointment must be for the ~~residue~~ remainder of the term only. A person appointed to the board ~~shall qualify~~ qualifies by taking the oath required of civil officers.

SECTION 4. AMENDMENT. Section 43-32-05 of the North Dakota Century Code is amended and reenacted as follows:

43-32-05. Compensation of members - Expenses of board and members thereof. Each member of the board ~~shall serve~~ serves without compensation, but ~~he~~ shall is entitled to receive ~~such~~ mileage and travel expenses while engaged in the performance of ~~the board~~ his duties ~~of his office~~ as ~~is~~ provided in section 54-06-09. The secretary of the board ~~shall~~ is entitled to receive ~~such~~ salary or other compensation; and ~~such~~ allowance for clerical and other expenses of the board, as the board ~~shall determine~~ determines.

SECTION 5. A new section to chapter 43-32 of the North Dakota Century Code is created and enacted as follows:

Authority to appoint or employ. The board may appoint or employ persons to assist the board in carrying out its duties under this chapter.

SECTION 6. AMENDMENT. Section 43-32-08.1 of the North Dakota Century Code is amended and reenacted as follows:

43-32-08.1. Continuing education requirements. The board shall adopt rules establishing requirements for the continuing education of psychologists. The board may refuse to renew, suspend, revoke, or place on probationary status any license issued under this chapter if the licensee fails to meet applicable continuing education requirements. Applicants for accreditation of continuing education courses, classes, or activities may be charged a reasonable fee determined by the board.

SECTION 7. A new section to chapter 43-32 of the North Dakota Century Code is created and enacted as follows:

Complaints - Investigations.

1. A person aggrieved by the actions of a psychologist licensed under this chapter may file a written complaint with the board citing the specific allegations of misconduct by the psychologist. The board shall notify the psychologist of the complaint and request a written response from the psychologist.
2. The board may investigate a complaint on its own motion, without requiring the identity of the complainant to be made a matter of public record, if the board concludes that good cause exists for preserving the confidentiality of the complainant.
3. A psychologist who is the subject of an investigation by the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any reasonable question raised by or on behalf of the board relating to the subject of the investigation, and providing copies of patient records when reasonably requested by the board and accompanied by the appropriate release.
4. In order to pursue an investigation, the board may subpoena and examine witnesses and records, including patient records, and copy, photograph, or take samples. The board may require the licensed psychologist to give statements under oath, to submit to a physical or psychological examination, or both, by a physician or other qualified evaluation professional selected by the board, if requiring an examination is in the best interest of the public. The patient records released to the board are not public records.
5. Unless a patient release is on file allowing the release of information at the public hearing, patient records acquired by the board in its investigation are confidential and closed to the public. All board meetings at which patient testimony or records are taken or reviewed are confidential and closed to the public. If no patient testimony or records are taken or reviewed, the remainder of the meeting is an open meeting unless a specific exemption is otherwise applicable.

SECTION 8. AMENDMENT. Section 43-32-13 of the North Dakota Century Code is amended and reenacted as follows:

43-32-13. Annual license and fee. ~~On or before~~ Before January first of each year, every licensed psychologist in the state shall pay to the secretary of the board an annual license fee ~~to be determined by regulation of the board~~ not to exceed one hundred dollars. The secretary of the board, upon payment of the annual license fee by a person licensed under this chapter, shall issue a certificate of annual license. ~~No~~ A person may not hold ~~himself~~ oneself out as a licensed psychologist until the annual license fee ~~has been~~ is paid. ~~The violation~~ the board shall revoke the license of a person who violates this section is cause for revocation of his license by the board. ~~The~~ Annually, the board shall annually mail a renewal notice to all licensed psychologists at the address on file with the board.

SECTION 9. AMENDMENT. Section 43-32-14 of the North Dakota Century Code is amended and reenacted as follows:

43-32-14. Payment of delinquent license fees - Reinstatement. ~~Any~~ A person who has been a licensed psychologist in this state under ~~the provisions of this chapter;~~ and ~~who~~ whose license has had his license been revoked because of his for failure to pay the annual license fee; must be reinstated and his the license renewed by his paying if within one year from the date of revocation the person pays to the secretary of the board the amount of the annual license fees in which he is then in default and a late fee in the amount of twenty dollars.

SECTION 10. A new section to chapter 43-32 of the North Dakota Century Code is created and enacted as follows:

Continuing education requirements - Renewal. Absent a showing of good cause, the board may not renew a license issued under this chapter without proof the continuing education requirements established by rule of the board have been met. A person whose license is not renewed because of failure to meet the continuing education requirements must be reinstated and the license renewed if, within one year from the date of nonrenewal, the person demonstrates to the secretary of the board the continuing education requirements have been satisfied and pays the renewal fee and a late fee to be determined by rule of the board.

SECTION 11. AMENDMENT. Section 43-32-16 of the North Dakota Century Code is amended and reenacted as follows:

43-32-16. Board to keep records.

1. The board shall keep a record of its proceedings and a register of all applicants for licensing which must show:
 - a. The name, age, and residence of each applicant.
 - b. The date of ~~the~~ each applicant's application.
 - c. The place of business of ~~such~~ each applicant.
 - d. A summary of the educational and other qualifications of ~~such applicants~~ each applicant.
 - e. Whether ~~or not~~ an examination was required of an applicant.
 - f. Whether ~~or not~~ a license was granted to an applicant.
 - g. The date of the action of the board.

- h. ~~Such other~~ Any information as may be deemed the board determines necessary or advisable by the board in aid of the above requirements of this subsection.
2. ~~The~~ Except as otherwise provided by law, the records of the board are public records and evidence of the proceedings of the board set forth therein, and a transcript thereof of board proceedings, duly certified by the secretary of the board, bearing the seal of the board, is admissible in evidence with the same force and effect as if the original were produced.

SECTION 12. AMENDMENT. Section 43-32-19 of the North Dakota Century Code is amended and reenacted as follows:

43-32-19. Licensing of psychologists from other states. Upon application ~~and~~ accompanied by the required fee, the board ~~may~~, without written or oral examination, may issue a license to any person who at the time of application furnishes evidence satisfactory to the board that ~~he~~ the applicant is licensed or certified as a psychologist by a similar board of another state whose standards, in the opinion of the board, are not lower than those required by this chapter.

SECTION 13. AMENDMENT. Section 43-32-20 of the North Dakota Century Code is amended and reenacted as follows:

43-32-20. Licensing - Written and oral examination - Qualifications of applicants. The board shall issue a license ~~as a psychologist~~ to each applicant who files an application upon a form and in ~~such~~ a manner ~~as~~ the board prescribes, ~~accompanied by~~ submits the required fee, and who ~~furnishes evidence~~ demonstrates to the board that ~~he~~ the applicant:

1. ~~Is of good moral character~~ Will adhere to the American psychological association ethical principles of psychologists and code of conduct, 1992, or revised editions if adopted by the board by rule.
2. ~~Is not found by the board to be engaged in unethical practices.~~
3. ~~Has received from an accredited school or college as defined by this chapter a doctorate; with~~ degree in a program of studies substantially psychological in nature.
4. ~~3.~~ Demonstrates professional competence as shown by passing such Has passed the examinations, written or oral, or both, as the board deems necessary.
5. ~~4.~~ Has not, within the preceding six months, failed an examination given completed at least two full years of supervised professional experience, one year of which must be an internship program, and one year of which must be postdoctoral. Both years of experience must comply with the board's rules.

SECTION 14. A new section to chapter 43-32 of the North Dakota Century Code is created and enacted as follows:

Postdoctoral supervised psychological employment.

1. Supervision may only be performed by a licensed psychologist with a competency in supervision in professional psychology in the area of practice being supervised.
2. Supervision of an applicant for licensure as a licensed psychologist must include at least two hours of regularly scheduled direct supervision a week for full-time employment, one hour of which must be with the supervisor on a one-to-one basis. The remaining hour may be with other mental health professionals designated by the supervisor. The board may approve an exception to the weekly supervision requirement for a week when the supervisor was ill or otherwise unable to provide supervision. The board may prorate the two hours per week of supervision for persons preparing for licensure on a part-time basis.
3. The board may adopt rules regarding supervision requirements and reporting.

SECTION 15. AMENDMENT. Section 43-32-21 of the North Dakota Century Code is amended and reenacted as follows:

43-32-21. Consideration of application and notice to applicant. Upon investigation of the application and other evidence submitted, the board ~~shall~~, not less than thirty days ~~prior to~~ before the examination, shall notify each applicant that the application and evidence submitted for licensing is satisfactory and accepted, or unsatisfactory and rejected. If rejected, ~~said~~ the notice must state the reasons for ~~such~~ rejection and explain the right to a hearing under chapter 28-32, if a hearing is requested within thirty days.

SECTION 16. AMENDMENT. Section 43-32-27 of the North Dakota Century Code is amended and reenacted as follows:

43-32-27. Denial - Revocation or suspension of license - Grounds.

1. The board, after notice and hearing and by an affirmative vote of at least ~~three of its five~~ a majority of board members, ~~shall~~ may withhold, deny, revoke, or suspend any psychologist license issued or applied for ~~in accordance with the provisions of~~ under this chapter, or otherwise discipline a licensed psychologist, upon proof ~~that~~ the applicant or licensed psychologist:
 4. a. Has been convicted of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as a psychologist, or ~~where~~ when the board ~~determines~~ finds, ~~following after the conviction of any offense~~, that a person is not sufficiently rehabilitated under section 12.1-33-02.1.
 - ~~2.~~ b. Is using any narcotic or ~~any~~ alcoholic beverage to an extent or in a manner dangerous to ~~himself~~ the psychologist, any other person, or the public, or to an extent that ~~such~~ the use impairs ~~his~~ the psychologist's ability to perform the work of a professional psychologist with safety to the public.
 - ~~3.~~ c. Has impersonated another person holding a psychology license or allowed another person to use ~~his~~ the psychologist's license.

4. d. Has used fraud or deception in applying for a license or in taking an examination ~~provided for in~~ under this chapter.
5. e. Has allowed ~~his~~ the psychologist's name or license issued under this chapter to be used in connection with any person ~~or persons~~ who ~~perform~~ performs psychological services outside of the area of their that person's training, experience, or competence.
6. f. Is legally adjudicated insane or mentally incompetent; ~~the.~~ The record of ~~such the~~ adjudication ~~being~~ is conclusive evidence ~~thereof~~ of that fact.
7. g. Has engaged in any form of unethical conduct as defined in "Ethical Standards for Principles of Psychologists and Code of Conduct" as adopted and published by the American psychological association, ~~1953~~ 1992, ~~and as~~ or revised editions if adopted by the board by rule.
8. h. Has become grossly negligent in the practice of ~~his~~ the profession.
9. i. Has willfully or negligently violated ~~any of the provisions of~~ this chapter.
- j. Has engaged in an act in violation of rules adopted by the board.

~~The suspension by the board of the license of a psychologist must be for a period not exceeding one year.~~

2. A person ~~who has been refused a license, or~~ whose license has been revoked; ~~under the provisions of this section;~~ may reapply for licensing after two years have elapsed from the date of ~~such denial or~~ revocation.

SECTION 17. A new section to chapter 43-32 of the North Dakota Century Code is created and enacted as follows:

Hearing. All hearings must be conducted pursuant to chapter 28-32. For purposes of a hearing, the licensee or applicant is the sole party in interest under section 28-32-08 and section 28-32-05 applies only to the licensee or applicant.

SECTION 18. AMENDMENT. Section 43-32-29 of the North Dakota Century Code is amended and reenacted as follows:

43-32-29. Appeal from decision of board. An appeal from the final decision of the board in any matter covered by this chapter may be taken to the Burleigh County district court ~~of or~~ the aggrieved party's county in which the decision was made of residence in accordance with ~~the provisions of~~ chapter 28-32.

SECTION 19. AMENDMENT. Section 43-32-30 of the North Dakota Century Code is amended and reenacted as follows:

43-32-30. Persons exempt from the provisions of this chapter. ~~The provisions of this~~ This chapter ~~de~~ does not apply to ~~the following:~~

1. Any person in the employ of any federal, state, county or municipal agency, or other political subdivision, or any nonprofit corporation or educational institution presently chartered by this state, insofar as the

activities and services of the person are a part of the duties of the person's office or position with such agency, nonprofit corporation or institution. This exemption is not available or effective after July 1, ~~1970~~ 1999. However, the exemption period may be extended by the board in individual cases where hardship or other good cause is shown by the agency, nonprofit corporation or institution covered, or where the person affected has received from a school or college a master's degree in psychology and the person's activities and services with such agency, nonprofit corporation or institution are performed under the supervision of a licensed psychologist. After reviewing the exemption under this subsection, the board and the department of human services shall review their definitions and rules for a master's degree in psychology as used in their own credential requirements.

2. A student; or intern; ~~or resident in psychology~~ pursuing a course of study in psychology at a school or college, if ~~such~~ the activities and services ~~constitute~~ are a part of the person's supervised course of study if, provided the ~~person~~ student or intern does not use the title "psychologist" and the student; or intern; ~~or resident~~ status is clearly stated.
3. A nonresident; ~~duly~~ licensed or certified in the state of the person's residence who does not practice psychology in this state for a period of more than thirty days in any calendar year.
4. A lecturer, from any school or college, who uses an academic or research title when lecturing to institutions or organizations. However, the lecturer may not engage in the practice of psychology unless the lecturer is licensed to practice psychology in this state.
5. ~~Any~~ A person ~~who~~ is employed by a public school and whose activities and services are restricted to the practice of psychology in the district or service unit of employment. This exemption applies only when the person has received a master's degree in school psychology from an accredited graduate training program. Standards must be established by mutual consent of the board and the superintendent of public instruction.
6. A person ~~who~~ is certified, licensed, or registered in this state in another health care profession, whose scope of practice is consistent with the accepted standards of that person's profession, and who does not represent to be rendering psychological services.
7. An applicant licensed to practice psychology in another jurisdiction, pending disposition of the applicant's application, if the applicant notifies the board on a form provided by the board of the applicant's intent to practice pending disposition of the application and the applicant adheres to the requirements of this chapter and the rules adopted by the board.
8. A person employed by an agency, nonprofit corporation, or institution who is currently exempt from licensure continues to be exempt if the person continues employment in the same position with the agency, nonprofit corporation, or institution that applied for and received the exemption.
9. A psychologist resident performing services supervised as provided under section 14 of this Act.

SECTION 20. REPEAL. Sections 43-32-18 and 43-32-28 of the North Dakota Century Code are repealed.

Approved April 2, 1997

Filed April 3, 1997

CHAPTER 379

HOUSE BILL NO. 1161

(Human Services Committee)

(At the request of the North Dakota Board of Social Work Examiners)

SOCIAL WORK LICENSING AND FEES

AN ACT to create and enact a new section to chapter 43-41 of the North Dakota Century Code, relating to fees charged by the North Dakota board of social work examiners; to amend and reenact subdivision e of subsection 2 of section 26.1-36-09, and sections 43-41-01, 43-41-04, 43-41-05, 43-41-10, and 43-41-12 of the North Dakota Century Code, relating to group health policy and health service contract mental disorder coverage and social work licensures; and to repeal sections 43-41-06 and 43-41-12.1 of the North Dakota Century Code, relating to licensing requirements for social workers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ **SECTION 1. AMENDMENT.** Subdivision e of subsection 2 of section 26.1-36-09 of the North Dakota Century Code is amended and reenacted as follows:

- e. (1) In the case of benefits provided for outpatient treatment, the benefits must be provided for a minimum of thirty hours for services covered under this section in any calendar year if the treatment services are provided within the scope of licensure by a nurse who holds advanced licensure with a scope of practice within mental health or if the diagnosis, evaluation, and treatment services are provided within the scope of licensure by a licensed physician, a licensed psychologist who is eligible for listing on the national register of health service providers in psychology, or a licensed certified independent clinical social worker ~~who~~:
- (a) Possesses a master's or doctorate degree in social work from an institution accredited by the council of social work education;
 - (b) Has at least one year of direct clinical social work practice during graduate school or one year of postgraduate supervised clinical social work practice in a structured teaching environment;
 - (c) Has completed at least the equivalent of four years of full-time supervised clinical social work experience within the last seven years;

¹ Section 26.1-36-09 was also amended by section 1 of Senate Bill No. 2040, chapter 255.

- (d) ~~Has passed the clinical examination or its equivalent offered by the North Dakota board of social work examiners; and~~
 - (e) ~~If not licensed in this state, is licensed, certified, or registered at the highest level of social work practice in another state.~~
- (2) A person who is qualified for third-party payment by the board of social work examiners on August 1, ~~1995~~ 1997, is exempt from ~~subparagraphs e and d~~ paragraph 1 of this subdivision. ~~Supervision under subparagraph e may be provided by a qualified clinical social worker, a licensed psychologist, or a licensed psychiatrist, but the preferred supervisor is the qualified clinical social worker.~~

SECTION 2. AMENDMENT. Section 43-41-01 of the North Dakota Century Code is amended and reenacted as follows:

43-41-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the North Dakota board of social work examiners.
2. "Licensed certified social worker" means an individual who has a doctorate or master's degree in social work from a college or university accredited by the council on social work education and who has fulfilled the requirements for licensure.
3. "Licensed independent clinical social worker" means an individual who has a doctorate or master's degree in social work from a college or university accredited by the council on social work education and who has fulfilled the requirements for licensure or has been registered by the board for third-party reimbursement before August 1, 1997.
4. 4. "Licensed social worker" means an individual who has a baccalaureate degree in social work from a college or university accredited by the council on social work education and who has fulfilled the requirements for licensure.
4. 5. "Private practice of social work" means the independent practice of social work by a qualified individual who is self-employed on a full-time or part-time basis and is responsible for that independent practice. Consultation services provided to an organization or an agency are not considered to be the private practice of social work.
5. 6. Social work practice consists of the professional application of social work values, principles, and techniques in: helping people obtain tangible services; counseling; psychotherapy with individuals, families, and groups; helping communities or groups to improve social and health services; providing social casework; directly supervising programs providing social work services; social work education; social work research; or any combination of these. The practice of social work requires knowledge of human development and behavior, of social, economic, and cultural institutions, and of the interaction of all of these factors.

SECTION 3. AMENDMENT. Section 43-41-04 of the North Dakota Century Code is amended and reenacted as follows:

43-41-04. Licenses.

1. Except as otherwise provided in this chapter, no person may engage in social work practice in this state unless that person is a licensed social worker or a licensed certified social worker.
2. The board shall issue a license as a licensed social worker to an applicant who:
 - a. Has a baccalaureate degree in a social work or social welfare program approved by the board from a college or university accredited by the council on social work education.
 - b. Has passed an examination approved by the board for this purpose.
 - c. Has satisfied the board that the applicant agrees to adhere to the code of social work ethics adopted by the board.
3. The board shall issue a license as a licensed certified social worker to an applicant who:
 - a. Has a doctorate or master's degree from a school of social work accredited by the council on social work education.
 - b. Has passed an examination approved by the board for this purpose.
 - c. Has satisfied the board that the applicant agrees to adhere to the code of social work ethics adopted by the board.
4. The board shall issue a license as a licensed independent clinical social worker to an applicant who:
 - a. Has a doctorate or master's degree from a school of social work accredited by the council on social work education.
 - b. Has passed an examination approved by the board for this purpose.
 - c. Has satisfied the board that the applicant has successfully completed four years of full-time, post-master's clinical social work experience under the supervision of a licensed certified social worker who has two years of experience, a licensed clinical psychologist, or a licensed psychiatrist. This requirement must be waived if the applicant was approved by the board for third-party reimbursement or certified for private practice before August 1, 1997.
 - d. Has satisfied the board that the applicant agrees to adhere to the code of social work ethics adopted by the board.

SECTION 4. AMENDMENT. Section 43-41-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-41-05. Private practice of social work. ~~No~~ A person may not engage in the private practice of social work unless that person: has been licensed by the board as a licensed independent clinical social worker or was certified to practice privately by the board before August 1, 1997.

- ~~1. Is licensed under this chapter as a licensed certified social worker.~~
- ~~2. Has had three years of post master's experience under the supervision of a licensed certified social worker or a social worker who is eligible for licensure as a licensed certified social worker.~~
- ~~3. Has passed the clinical examination or its equivalent offered by the board.~~
- ~~4. Is registered with the board as eligible for private practice under criteria as may be established by board rule.~~

SECTION 5. AMENDMENT. Section 43-41-10 of the North Dakota Century Code is amended and reenacted as follows:

43-41-10. Grounds for disciplinary proceedings. The board may deny, refuse to renew, suspend, revoke, or place on probationary status any license issued under this chapter on proof at a hearing that the applicant or licensed person:

1. Has been convicted of an offense determined by the board to have a direct bearing upon that individual's ability to practice social work ~~and~~ or is not sufficiently rehabilitated as determined by the board in accordance with section 12.1-33-02.1.
2. Is addicted to the habitual use of alcoholic beverages, narcotics, or stimulants to such an extent as to incapacitate that individual from the practice of social work.
3. Has been grossly negligent in the practice of social work.
4. Has violated one or more of the rules and regulations of the board.
5. Has violated the code of social work ethics adopted by the board.
6. In order to pursue the investigation, the board may subpoena and examine witnesses and records, including client records, and copy, photograph, or take samples. The board may require a licensed social worker to give statements under oath and to submit to a physical or mental examination, or both, by a physician or physicians and other qualified evaluation professionals selected by the board if it appears to be in the best interests of the public that an evaluation be secured. A written request from the board constitutes authorization to release information. ~~All~~ Absent a client release on file allowing the release of information, all client records released to the board are confidential and ~~not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota~~ are not public records.
7. Unless there is a client release on file allowing the release of information at the public hearing, ~~all data and information, including client and juvenile records, acquired by the board in its investigation~~ are introduced or client and juvenile testimony of a personal nature taken at

a public hearing is confidential and closed to the public. ~~All~~ The portions of board meetings where client and juvenile testimony or records are taken or ~~revised~~ reviewed are confidential and closed to the public. If no client or juvenile testimony or records are taken or reviewed, the remainder of the meeting is an open meeting unless a specific exemption is otherwise applicable.

SECTION 6. AMENDMENT. Section 43-41-12 of the North Dakota Century Code is amended and reenacted as follows:

43-41-12. Renewal of licenses.

1. All licenses are effective when issued by the board.
2. All licenses of licensed social workers and licensed certified social workers expire on December 31, 1985, and on December thirty-first every two years thereafter.
3. A license may be renewed by payment of the renewal fee set by the board, provided the applicant's license is not currently revoked or suspended.
4. If the application for renewal is not received ~~within six months of~~ on or before the expiration date, ~~the board shall require reexamination~~ license expires and the person may not practice social work until the license is renewed.
5. At the time of renewal the board shall require each applicant to present satisfactory evidence that the applicant has completed the continuing education requirements specified by the board.
6. If a license has not been renewed as a result of nonpayment of the renewal fee or the failure of the licensee to present satisfactory proof of completion of the continuing education requirements, the applicant may renew the license within six months after the expiration of the previous license upon payment to the board of the amount of the renewal fee and by presenting satisfactory proof that the continuing education requirements have been met. The board may also charge a late fee. If a license is not renewed within six months after the expiration of the license, a new application for licensure must be made.

SECTION 7. A new section to chapter 43-41 of the North Dakota Century Code is created and enacted as follows:

Fees. The board shall set by rule all fees authorized by this chapter. The fees may not exceed the following amounts:

- | | |
|---------------------------|-----------------|
| 1. <u>Application fee</u> | <u>\$ 50.00</u> |
| 2. <u>License fee</u> | <u>\$150.00</u> |
| 3. <u>Renewal fee</u> | <u>\$100.00</u> |
| 4. <u>Late fee</u> | <u>\$300.00</u> |

SECTION 8. REPEAL. Sections 43-41-06 and 43-41-12.1 of the North Dakota Century Code are repealed.

Approved March 27, 1997

Filed March 27, 1997

CHAPTER 380

HOUSE BILL NO. 1160

(Industry, Business and Labor Committee)
(At the request of the Board of Counselor Examiners)

COUNSELING PRACTICE AND LICENSING

AN ACT to create and enact three new sections to chapter 43-47 of the North Dakota Century Code, relating to the authority of the board of counselor examiners to appoint or employ persons, payment of delinquent license fees, and unauthorized practice of counseling; to amend and reenact sections 43-47-01, 43-47-03, 43-47-06, and 43-47-08 of the North Dakota Century Code, relating to definitions, duties, responsibilities, license qualifications, and complaints and investigations applicable to the board of counselor examiners; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-47-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-47-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Board" means the board of counselor examiners.
2. "Counseling" means assisting an individual, group, or family to develop understanding of intrapersonal and interpersonal problems; to define and set goals, make decisions, and plan a course of action reflecting the needs, interests, and abilities of the person or persons; and to use informational and community resources as needed for personal, social, educational, and vocational development and adjustment the application of human development and mental health principles in a therapeutic process and professional relationship to assist individuals, couples, families, and groups in achieving more effective emotional, mental, marital, family, and social or educational development and adjustment. The goals of professional counseling are to:
 - a. Facilitate human development and adjustment throughout the life span;
 - b. Prevent, assess, and treat emotional, mental, or behavioral disorder and distress which interferes with mental health;
 - c. Conduct assessments for the purpose of establishing treatment goals and objectives; and
 - d. Plan, implement, and evaluate treatment plans using professional counseling strategies and interventions.
3. "Counselor" means a person who has been granted either a professional counselor or associate professional counselor license by the board.

4. "Licensed associate professional counselor" means a person who has been granted an associate professional license by the board to offer and conduct counseling under the supervision of a licensed professional counselor or such other person meeting the requirements of supervising professional set by the board.
5. "Licensed professional counselor" means a person who is trained in counseling; ~~guidance, or human services~~ or a related human service field and has been granted a professional counselor license by the board.

SECTION 2. AMENDMENT. Section 43-47-03 of the North Dakota Century Code is amended and reenacted as follows:

43-47-03. Duties and responsibilities of board. In addition to the duties set forth elsewhere in this chapter, the board shall:

1. Publish an annual list of the names and addresses of all persons licensed under this chapter.
2. Approve and administer an examination for counselors.
3. Set and collect a fee, not to exceed one hundred fifty dollars, for the filing of each application for a license under this chapter and set and collect a fee, not to exceed ~~twenty~~ one hundred dollars, for the renewal of a license under this chapter.
4. Deposit and disburse all fees and moneys collected by the board in accordance with section 54-44-12.
5. Establish continuing education requirements for license renewal.
6. Issue provisional or probationary licenses.
7. Establish a code of ethics for the practice of counseling.

SECTION 3. A new section to chapter 43-47 of the North Dakota Century Code is created and enacted as follows:

Authority to appoint or employ. The board may appoint or employ persons to assist the board in carrying out its duties under this chapter.

SECTION 4. AMENDMENT. Section 43-47-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-47-06. Licenses - Qualifications - Reciprocity.

1. Except as otherwise provided in this chapter, no person may engage in counseling in this state unless that person is a licensed professional counselor or licensed associate professional counselor.
2. The board shall issue a license as a licensed professional counselor to each applicant who files an application upon a form and in a manner the board prescribes, accompanied by the required fee, and who furnishes evidence to the board that the applicant:

- a. Has received a master's degree from an accredited school or college in counseling or other program that meets the academic and training standards adopted by the board;
 - b. Has provided personal and professional recommendations that meet the requirements adopted by the board and has satisfied the board that the applicant will adhere to the highest standards of the profession of counseling;
 - c. Has two years of supervised experience under a licensed professional counselor, or its equivalent as determined by the board;
 - d. Has provided a statement of professional intent to practice in this state describing the applicant's proposed use of the license, the intended client population, and the counseling procedures, as defined by the board, the applicant intends to use in serving the client population; and
 - e. Has demonstrated knowledge in the field of counseling by successful completion of an examination prescribed by the board.
3. The board shall issue a license as a licensed associate professional counselor to each applicant who files an application upon a form and in a manner the board prescribes, accompanied by the required fee, and who furnishes sufficient evidence to the board that the applicant:
- a. Has received a master's degree from an accredited school or college in counseling or other program that meets the academic and training standards adopted by the board;
 - b. Has provided personal and professional recommendations that meet the requirements adopted by the board and has satisfied the board that the applicant will adhere to the standards of the profession of counseling; and
 - c. Has provided a written plan for supervised experience which meets the requirements adopted by the board.
4. The board may waive the formal examination requirements for a professional counselor license when the applicant has been licensed or certified to practice counseling in another state under standards and qualifications similar or greater to those set by the board.
5. A professional counselor shall renew the license every two years. The board shall renew a license upon payment of a fee set by the board and upon demonstration by the licenseholder of completion of continuing education requirements set by the board.
6. An associate professional counselor initially licensed under this chapter may be licensed for no more than two years. The associate professional counselor's license may be extended beyond two years only upon recommendation of the associate professional counselor's supervisor and three other counselors, at least one of whom must be a professor from the associate professional counselor's training program.

7. For a period of two years beginning on July 6, 1989, the board shall issue upon the application of any person a license as a licensed professional counselor if the applicant:
- a. Has received a master's degree that is primarily counseling in content from a regionally accredited institution of higher education;
 - b. Has worked for pay in the counseling field, including counselor education during two of the previous five years;
 - c. Shows evidence of supervision or continued professional growth; and
 - d. Successfully completes an examination approved by the board.

SECTION 5. A new section to chapter 43-47 of the North Dakota Century Code is created and enacted as follows:

Payment of delinquent license fees - Reinstatement. A person who has been licensed under this chapter, and whose license has not been renewed because of the failure to pay the annual license fee, must be reinstated and the license renewed if within one year from the date of nonrenewal the person pays to the secretary of the board the amount of the annual license fee in default and a late fee to be determined by rule of the board.

SECTION 6. AMENDMENT. Section 43-47-08 of the North Dakota Century Code is amended and reenacted as follows:

43-47-08. Complaints - Investigations.

1. A person aggrieved by the actions of a counselor licensed under this chapter may file a written complaint with the board citing the specific allegations of misconduct by the counselor. The board shall notify the counselor of the complaint and require a written response from the counselor. Neither the initial complaint nor the counselor's response is public record. The counselor's response must be made available to the complainant.
2. A counselor who is the subject of an investigation by the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any reasonable question raised by or on behalf of the board relating to the subject of the investigation, and providing copies of patient records when reasonably requested by the board and accompanied by the appropriate release.
3. In order to pursue the investigation, the board may subpoena and examine witnesses and records, including patient records, and copy, photograph, or take samples. It may require the counselor to give statements under oath, submit to a physical or psychological examination, or both, by a physician or physicians or other qualified evaluation professionals selected by the board if it appears to be in the best interest of the public that this evaluation be secured. A written request from the board constitutes authorization to release information. Patient records that are released to the board are not public records.

4. After review of the complaint ~~and~~, the counselor's response, and information obtained in the investigation, the board shall determine if there is a reasonable basis to believe that the allegations are true and that the allegations constitute a violation of this chapter or the rules of the board. If the board determines that there is a reasonable basis to believe that the allegations are true and that the allegations constitute a violation of this chapter or the rules of the board, the board shall take appropriate action. If a reasonable basis is not found by the board, the board shall so notify the complaining party and the counselor in writing.
5. Unless there is a patient release on file allowing the release of information at the public hearing, patient records acquired by the board in its investigation are confidential and closed to the public. All portions of board meetings wherein patient testimony or records are taken or reviewed are confidential and closed to the public. If no patient testimony or records are taken or reviewed, the remainder of the meeting is an open meeting unless a specific exemption is otherwise applicable.

SECTION 7. A new section to chapter 43-47 of the North Dakota Century Code is created and enacted as follows:

Costs of prosecution - Disciplinary proceedings. The board may impose a fee against any person subject to regulation under this chapter to reimburse the board for all or part of the costs of administrative actions resulting in disciplinary action, including the amount paid by the board for services from the office of administrative hearings, attorney's fees, court costs, witness fees, staff time, and other expenses.

Approved March 23, 1997
Filed March 24, 1997

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.

¹ **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,

¹ 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.

² **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

² 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.

³ **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

³ 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:

⁴ **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

⁴ 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

PRINTING LAWS

CHAPTER 386

HOUSE BILL NO. 1119

(Government and Veterans Affairs Committee)

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

PUBLIC PRINTING REQUIREMENTS REPEAL

AN ACT to repeal sections 46-02-14 and 46-02-19 of the North Dakota Century Code, relating to printing contractors preserving copies of work and delivering bills and to the type size used to print public officials' names on public documents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 46-02-19 of the North Dakota Century Code and section 46-02-14 of the 1995 Supplement to the North Dakota Century Code are repealed.

Approved March 19, 1997

Filed March 19, 1997

PROPERTY

CHAPTER 387

HOUSE BILL NO. 1424

(Representatives Martinson, C. Johnsen)
(Senator Kringstad)

MODIFICATION OF COVENANTS

AN ACT to create and enact a new section to chapter 47-04 of the North Dakota Century Code, relating to modification of covenants running with the land.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 47-04 of the North Dakota Century Code is created and enacted as follows:

Modification of covenants running with the land. A covenant running with the land executed after the effective date of this Act must contain provisions addressing the modification of the covenant. If a covenant running with the land does not contain provisions relating to the modification of the covenant, eighty-five percent of all of the owners of the real property subject to the covenant may agree, in writing, to amend the covenant to include provisions relating to the modification of the covenant. Following approval of any modification, the modified covenant must be filed for recording with the register of deeds. This section does not apply to subdivisions that are not completed unless the subdivision has been in development for over fifteen years.

Approved March 23, 1997
Filed March 24, 1997

CHAPTER 388

HOUSE BILL NO. 1250

(Representatives Oban, Carlisle)
(Senators B. Stenehjem, Mutzenberger)

MOBILE HOME STORM SHELTER RESPONSIBILITY

AN ACT to amend and reenact section 47-06-04.1 of the North Dakota Century Code, relating to the maintenance responsibilities of mobile home storm shelter owners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-06-04.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

47-06-04.1. Mobile home storm shelters - Placement and transfer of ownership.

1. Upon approval of the mobile home park owner, the owner of a mobile home located in the park may construct a storm shelter in the mobile home park. The approval ~~shall~~ must be in writing and ~~shall set forth~~ must include the type, location, and use of the shelter, and ~~shall also include~~ an agreement between the park owner and the mobile home owner concerning ownership and maintenance of the shelter.
2. Notwithstanding section 47-06-04, the agreement between the owner of the mobile home and the park owner ~~shall~~ must provide that the owner of the mobile home is the owner of the shelter and may remove the shelter provided the land is returned to its original condition during any time that person owns the mobile home.
3. The shelter owner may ~~also~~ transfer ownership of the shelter to either a person who purchases the mobile home or to the mobile home park owner. The transfer must be in writing; must include the type, location, and use of the shelter; must include the maintenance responsibilities of the parties; and must be signed by both parties. If a mobile home owner transfers the shelter to a purchaser of the mobile home, the terms of the transfer must be the same as the terms of the agreement between the park owner and the mobile home owner required under subsection 1.
 - a. If a suitable price cannot be agreed upon with the mobile home park owner, the shelter owner is deemed to have transferred the ownership and maintenance responsibilities of the shelter to the park owner without cost, unless the shelter is removed or the shelter is transferred to a purchaser of the mobile home as provided in this section.
 - b. If the park owner is unwilling to assume ownership of the shelter, ~~he~~ the park owner may require the mobile home owner to remove the shelter and return the land to its original condition.

4. The park owner ~~shall~~ is not ~~be~~ liable for any injury or damages ~~which~~ that may occur to the mobile home owner as a result of the installation or use of the mobile home storm shelter.
5. All shelters must meet with the approval of local governing bodies.

Approved March 13, 1997

Filed March 13, 1997

CHAPTER 389

SENATE BILL NO. 2179

(Senators Nething, Thompson, Yockim)
(Representatives Byerly, D. Johnson, Kerzman)

INTEREST ON LATE PAYMENTS

AN ACT to amend and reenact section 47-14-05 of the North Dakota Century Code, relating to late payment penalties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-14-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

47-14-05. Legal rate of interest - Interest after maturity. Interest for any legal indebtedness ~~shall~~ must be at the rate of six percent per annum unless a different rate not to exceed the rate specified in section 47-14-09 is contracted for in writing. All contracts ~~shall~~ must bear the same rate of interest after maturity as they bear before maturity, and any contract attempting to make the rate of interest higher after maturity ~~shall be~~ is void as to ~~such~~ the increase of interest, except for a charge for late payment penalty charged in addition to interest which may not exceed fifteen dollars or fifteen percent of the late payment, whichever is less, unless otherwise agreed to in ~~the~~ any commercial, agricultural, or real estate note or mortgage.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 390

HOUSE BILL NO. 1344

(Representatives Stenehjem, DeKrey, Delmore)
(Senators Grindberg, Watne)

LANDLORD LIEN IN ABANDONED PROPERTY

AN ACT to amend and reenact section 47-16-30.1 of the North Dakota Century Code, relating to a lessor's rights in abandoned property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-16-30.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

47-16-30.1. Abandoned property - Disposal by lessor. Property with a total estimated value of not more than one thousand five hundred dollars which is left on the premises of a leased dwelling thirty days after the tenant has vacated the premises after the expiration of the lease term may be retained by the lessor and disposed of without legal process. The lessor is entitled to the proceeds from the sale of the property. The lessor may recover, from the lessee's security deposit, any storage and moving expenses in excess of the proceeds from the sale incurred in disposing of the property. If the lessor removes the abandoned property from the dwelling unit after a judgment of eviction has been obtained and the special execution has been served, the lessor has a lien upon the property for the reasonable amount of any storage and moving expenses and may retain possession of the property until the charges have been paid. The lien does not have priority over a prior perfected security interest in the property.

Approved April 3, 1997
Filed April 3, 1997

CHAPTER 391

SENATE BILL NO. 2238

(Senators Thompson, W. Stenehjem)
(Representatives Mahoney, Poolman)

PERFORMING RIGHTS SOCIETIES

AN ACT relating to performing rights societies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Copyright laws of the United States" means those laws specified pursuant to title 17 of the United States Code [Pub. L. 94-553; 17 U.S.C. 101 et seq.].
2. "Copyright owner" means the owner of a copyright of a musical work other than a motion picture or other audiovisual work or part of a motion picture or other audiovisual work, which is recognized and enforceable under the copyright laws of the United States.
3. "Performing rights society" means an association or corporation that licenses the public performance of nondramatic musical works on behalf of copyright owners, including the American Society of Composers, Authors, and Publishers; Broadcast Music, Incorporated; and SESAC, Incorporated.
4. "Proprietor" means the owner of a retail establishment, restaurant, inn, bar, tavern, sports or entertainment facility, not for-profit organization, or any other place of business or professional office located in this state in which the public may assemble and in which musical works may be performed, broadcast, or otherwise transmitted for the enjoyment of the members of the public in that place.
5. "Royalties" means the license fees payable by a proprietor to a performing rights society for the nondramatic public performance of musical works.

SECTION 2. Notice and information. A performing rights society may not enter, or offer to enter, a contract for the payment of royalties by a proprietor unless it agrees to provide to the proprietor upon request at the proprietor's place of business, by electronic means or otherwise, information as to whether specific copyrighted musical works are in its repertoire and the opportunity to review the most current available list of the performing rights society's members or affiliates.

SECTION 3. Contract requirements. Every contract for the payment of royalties between a proprietor and a performing rights society executed, issued, or renewed in this state must be signed by both parties to the contract and must include the following information:

1. The proprietor's name and business address and the name and location of each place of business to which the contract applies;

2. The name and business address of the performing rights society;
3. The duration of the contract; and
4. The schedule of rates and terms of royalties to be collected under the contract, including any sliding scale, discount, or schedule for any increase or decrease of those rates for the duration of the contract.

SECTION 4. Prohibited conduct. A performing rights society, or any agent, employee, or representative of a performing rights society, may not:

1. Enter onto the premises of a proprietor's business for the purpose of discussing or inquiring about a contract for the payment of royalties with the proprietor or the proprietor's employees, without first providing identification to the proprietor or the proprietor's employees, providing photographic identification from the society if requested, and making known to the proprietor or the proprietor's employees the purpose of the discussion or inquiry;
2. Engage in any coercive conduct, act, or practice that is substantially disruptive to a proprietor's business;
3. Use or attempt to use any unfair or deceptive act or practice in negotiating with a proprietor; or
4. Fail to comply with or fulfill the obligations imposed by sections 2 and 3 of this Act. However, this Act does not prohibit a performing rights society from conducting investigations to determine the existence of music use by a proprietor or informing a proprietor of the proprietor's obligation under the copyright laws of the United States.

SECTION 5. Remedies. Any person suffering a violation of this Act has a claim for relief to recover actual damages and reasonable attorney's fees and seek an injunction or any other remedy available.

SECTION 6. Application. This Act does not apply to contracts between copyright owners or performing rights societies and broadcasters licensed by the federal communications commission or to contracts with cable operators, programmers, or other transmission services. In addition, this Act does not apply to musical works performed in synchronization with an audiovisual film or tape. This Act does not apply to investigations by law enforcement officers or other persons concerning a suspected violation of section 47-21.1-03.

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 392

HOUSE BILL NO. 1113

(Industry, Business and Labor Committee)
(At the request of the Secretary of State)

SIMILAR TRADE NAME USE

AN ACT to amend and reenact section 47-25-03 of the North Dakota Century Code, relating to the consent to use a similar trade name.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-25-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

47-25-03. Trade name - Nature. No trade name registered may be the same as or deceptively similar to any other trade name, domestic or foreign corporation name, domestic or foreign limited liability company, or a name of any limited partnership authorized to do business in this state, or a name the right to which is in any manner reserved or registered in the office of the secretary of state, unless there is filed with the trade name registration a written consent of the holder of the similar name to use the proposed name, or if a franchise, a written consent from the franchiser.

Approved February 11, 1997
Filed February 11, 1997

CHAPTER 393

SENATE BILL NO. 2327

(Senators Mutch, Schobinger, Thompson)
(Representatives Berg, Froseth, Glasheim)

UNCLAIMED PROPERTY ACT DEFINITIONS

AN ACT to amend and reenact subsection 9 of section 47-30.1-01 and section 47-30.1-14 of the North Dakota Century Code, relating to gift certificates and the definition of intangible property under the Uniform Unclaimed Property Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 47-30.1-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9. "Intangible property" includes:
 - a. Moneys, checks, drafts, deposits, interest, dividends, and income.
 - b. Credit balances, customer overpayments, ~~gift certificates~~, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances.
 - c. Stocks and other intangible ownership interests in business associations.
 - d. Moneys deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions.
 - e. Amounts due and payable under the terms of insurance policies.
 - f. Amounts distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.
 - g. Amounts distributable from a mineral interest in land.

SECTION 2. AMENDMENT. Section 47-30.1-14 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

47-30.1-14. ~~Gift certificates and credit~~ Credit memos.

1. A ~~gift certificate~~ or a credit memo issued in the ordinary course of an issuer's business which remains unclaimed by the owner for more than three years after becoming payable or distributable is presumed abandoned.

2. ~~In the case of a gift certificate, the amount presumed abandoned is the price paid by the purchaser for the gift certificate.~~ In the case of a credit memo, the amount presumed abandoned is the amount credited to the recipient of the memo.

Approved March 25, 1997

Filed March 26, 1997

PUBLIC BUILDINGS

CHAPTER 394

HOUSE BILL NO. 1445

(Representative Carlson)

CONSTRUCTION MANAGERS

AN ACT to create and enact a new section to chapter 48-01.1 of the North Dakota Century Code, relating to the use of a construction manager for public improvement projects; and to amend and reenact section 48-01.1-01 of the North Dakota Century Code, relating to definitions regarding public improvement contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-01.1-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

48-01.1-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Construction" includes repair and alteration.
2. "Construction administration" means administrative services provided on behalf of the governing body, either by the governing body or a registered design professional, and includes providing clarifications, submittal review, recommendations for payment, preparation of change orders, and other administrative services included in the agreement with the registered design professional. The term does not include supervision of the construction activities for the construction contracts.
3. "Construction management" means the management and supervision of the construction of a public improvement, including the management and supervision of multiple prime contracts. The term does not include construction administration performed by a design professional under the terms of a professional services agreement with the governing body.
4. "Contractor" means any person, duly licensed, that undertakes or enters ~~into~~ a contract with a governing body ~~of~~ for the construction or construction management of any public improvement, including multiple prime contracts.
- ~~3.~~ 5. "Governing body" means the governing officer or board of any state entity or of any political subdivision.
- ~~4.~~ 6. "Public improvement" means any improvement the cost of which is payable from taxes or other funds under the control of a governing body including improvements for which special assessments are levied. The term does not include any county road construction and maintenance,

state highway, or public service commission project governed by titles 11, 24, or 38.

5. 7. "Surety" means a bond or undertaking executed by a surety company authorized to do business in this state which is countersigned by an agent of that company.

SECTION 2. A new section to chapter 48-01.1 of the North Dakota Century Code is created and enacted as follows:

Use of construction manager. If a governing body uses a construction manager on a public improvement, the construction manager must be a licensed contractor. A construction manager awarded a contract for construction of a public improvement shall bond the entire cost of the project through a single bond, or through bonds supporting all bid packages and the construction manager's bond for the full amount of the construction manager's services.

Approved April 4, 1997
Filed April 4, 1997

CHAPTER 395**HOUSE BILL NO. 1442**
(Representative Glasheim)**PUBLIC BID PUBLICATION**

AN ACT to amend and reenact section 48-01.1-03 of the North Dakota Century Code, relating to publication of advertising for bids for public improvement projects.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-01.1-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

48-01.1-03. Publication of advertisement for bids. If a contract of a governing body for the construction of a public improvement is estimated to cost in excess of ~~fifty~~ one hundred thousand dollars, the governing body shall advertise for bids by publishing for three consecutive weeks, the first publication to be at least twenty-one days before the date of the opening of bids. The advertisement must be published in the official newspaper of the political subdivision in which the public improvement is or will be located, and in a trade publication of general circulation among the contractors, building manufacturers, and dealers in this state, except the advertisement for a public improvement financed by special assessments need only be published once each week for two weeks in the official newspaper with the first publication being at least fourteen days before bid opening.

Approved March 25, 1997
Filed March 26, 1997

CHAPTER 396

HOUSE BILL NO. 1033

(Legislative Council)

(Advisory Commission on Intergovernmental Relations)

PUBLIC IMPROVEMENT PLANS AND SPECIFICATIONS

AN ACT to amend and reenact sections 43-19.1-28 and 48-01.1-04 of the North Dakota Century Code, relating to plans and specifications for public improvement contracts; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-19.1-28 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-28. Public works. ~~This~~ Except as otherwise provided by law, the state and its political subdivisions; ~~including counties, cities, townships and legally constituted boards, districts, commissions, or authorities,~~ may not engage in the construction of public works involving the practice of professional engineering ~~as herein defined~~ when the contemplated expenditure for the project exceeds the sum of fifty one hundred thousand dollars, unless the engineering drawings and specifications and estimates have been prepared by, and the construction ~~is~~ administration and construction observation services are executed under the supervision of, a registered professional engineer. Any engineering contract executed in violation of this section is ~~null and~~ void.

SECTION 2. AMENDMENT. Section 48-01.1-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

48-01.1-04. Plans and specifications for public improvement contracts. If a contract of a governing body for the construction of a public improvement is estimated to cost in excess of fifty one hundred thousand dollars, the governing body shall procure plans, drawings, and specifications for the work from a licensed architect or registered professional engineer. For public buildings in use by or to be used by the North Dakota agricultural experiment stations in connection with farm or agricultural research operations, the plans, drawings, and specifications ~~may,~~ with the approval of the board of higher education, may be procured from a registered professional engineer if the engineer is in the regular employment of the agricultural experiment station.

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

Approved March 19, 1997

Filed March 19, 1997

CHAPTER 397**HOUSE BILL NO. 1032**

(Legislative Council)

(Advisory Commission on Intergovernmental Relations)

MULTIPLE PRIME BID REQUIREMENTS

AN ACT to amend and reenact section 48-01.1-06 of the North Dakota Century Code, relating to the multiple prime bid requirement for public improvement contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-01.1-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

48-01.1-06. Bid requirements for public buildings. Multiple prime bids for the general, electrical, and mechanical portions of a project are required when any individual general, electrical, or mechanical contract is in excess of ~~fifty~~ one hundred thousand dollars. The governing body may also allow submission of single prime bids or bids for other portions of the project at its discretion. The governing body may not accept the single prime bid unless that bid is lower than the combined total of the lowest and best multiple bids for the project.

Approved March 25, 1997

Filed March 26, 1997

CHAPTER 398

HOUSE BILL NO. 1421

(Representatives Freier, Carlson, Timm)
(Senator Krebsbach)

CONTRACTOR BONDS

AN ACT to amend and reenact section 48-02-06.2 of the North Dakota Century Code, relating to bonds required of contractors for certain public improvement contracts; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-02-06.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

48-02-06.2. Bonds from contractors for public improvements. A governing body, as defined in section 48-01.1-01, authorized to enter into a contract for construction of a public improvement in excess of one hundred thousand dollars shall take from the contractor a bond before permitting any work to be done on that contract. The bond must be for an amount equal at least to the price stated in the contract. The bond must be conditioned to be void if the contractor and all subcontractors fully perform all terms, conditions, and provisions of the contract and pay all bills or claims on account of labor and materials including supplies used for machinery and equipment, performed, furnished, and used in the performance of the contract, including all demands of subcontractors. The requirement that bills and claims be paid must include the requirement that interest of the amount authorized under section 13-01-14 be paid on bills and claims not paid within ninety days. The bond is security for all bills, claims, and demands until fully paid, with preference to labor and material suppliers as to payment. The bond must run to the governing body, but any person having a lawful claim against the contractor, or any subcontractor, as provided in this chapter, may sue on the bond.

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

Approved March 13, 1997
Filed March 13, 1997

PUBLIC UTILITIES

CHAPTER 399

SENATE BILL NO. 2036

(Legislative Council)

(Government Organization Committee)

RAILROAD REGULATION

AN ACT to amend and reenact sections 49-10.1-01, 49-10.1-02, and 49-10.1-03 of the North Dakota Century Code, relating to the regulation of railroads by the public service commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-10.1-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-10.1-01. Authority of public service commission. ~~The commission, to the extent hereinafter provided shall have authority and power to not inconsistent with federal law, may regulate railroads within this state to the extent railroad activities constitute intrastate commerce. The commission shall exercise its jurisdiction over intrastate rail rates consistent with federal law so as to obtain certification of such jurisdiction from the federal government. All provisions of the North Dakota Century Code inconsistent with federal requirements for certification of intrastate rail jurisdiction shall be deemed inapplicable to the regulation of intrastate rail rates. All references to railroads in the North Dakota Century Code are subject to this provision without any requirement that such references specifically mention this limited jurisdiction of the state of North Dakota may represent the state interests in direct negotiations with rail carriers and in proceedings before Congress, federal agencies, and courts.~~

SECTION 2. AMENDMENT. Section 49-10.1-02 of the North Dakota Century Code is amended and reenacted as follows:

49-10.1-02. Public policy concerning the regulation of railroads. ~~All railroads are hereby declared to be common carriers affected with a public interest and subject to regulation as prescribed by this chapter and other applicable provisions of law. The commission, to the extent not inconsistent with federal law, shall regulate railroads to ensure that all rates, fares facilities, and charges made by any railroad shall be services are just and reasonable, and shall are not be unduly discriminatory, unduly or unreasonably prejudicial, nor unduly or unreasonably preferential. No railroad shall charge, demand, collect, or receive for the transportation of property or persons, or for any service in connection therewith, a remuneration which is more or less than, or different from, the rates, fares, and charges which legally have been established and filed with the commission as provided for in this chapter, nor shall any railroad refund or remit in any manner or by any device any portion of the rates, fares, and charges required to be collected by the tariffs on file with the commission or ordered by the commission. The commission shall further promote~~

the safety and protection of persons and property being transported by, coming in contact with, or otherwise being directly affected by railroads.

SECTION 3. AMENDMENT. Section 49-10.1-03 of the North Dakota Century Code is amended and reenacted as follows:

49-10.1-03. Regulatory powers. The commission shall regulate all railroads carrying property or passengers within this state. The commission, to the extent not inconsistent with federal law, shall:

1. ~~Fix, alter, regulate, and determine just, fair, reasonable and sufficient rates, fares, charges, and classifications, including joint rates, fares, charges, and classifications for the transportation of freight or passengers over continuous lines or routes in this state operated by one or more railroads.~~
2. ~~Require the filing with the commission of a tariff setting forth the rates, fares, charges, and classifications in a form and in a manner that the commission may prescribe from time to time which the commission shall require the railroad to open upon request of the shipper or consignee for public inspection within this state.~~
3. ~~Regulate the facilities, accounts, services, and safety of each such railroad.~~
4. ~~Prevent unfair competition, unjust discrimination, or undue or unreasonable preferences between shippers or consignees by lines of competing railroads.~~
5. 2. Require the filing of reports and data by railroads as the commission may ~~from time to time~~ determine to be necessary to allow it to carry out its regulatory functions ~~as set forth in~~ under this chapter and other provisions of law.
6. 3. Regulate railroads in all matters affecting the relations between railroads and the public to the end that ~~the provisions of this chapter~~ may be fully and completely carried out.
7. ~~Have power and authority, by general order or otherwise, to prescribe rules and regulations in conformity with this chapter applicable to railroads, and to do all things necessary to carry out and enforce the provisions of this chapter.~~

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 400**HOUSE BILL NO. 1309**

(Representatives R. Kelsch, Huether, Stenehjem)
(Senators Holmberg, Robinson)

RAILROAD POLICE AUTHORITY

AN ACT to amend and reenact section 49-10.1-05 of the North Dakota Century Code, relating to the authority, jurisdiction, and powers of railroad police.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-10.1-05 of the North Dakota Century Code is amended and reenacted as follows:

49-10.1-05. ~~Security officers~~ Railroad police. ~~Security officers hired by railroads, station agents, train crews, and trackmen~~ Railroad police officers who are designated by a railroad to be licensed under the laws of this state, while engaged in their employment with the railroad ~~shall~~ have the authority of a "law enforcement officer" pursuant to subsection ~~48~~ 17 of section 12.1-01-04 for the purpose of arresting any person committing a felony on railroad property or associated with railroad equipment, or to arrest a person committing a misdemeanor involving railroad property or relating to persons or property being transported by the railroad, or awaiting transportation by the railroad, and ~~shall further~~ have the power of removing an individual from a train who has no right to be there, or who is engaging in a conduct prohibited by title 12.1. ~~Persons so arrested shall be forthwith turned over to local or county law enforcement officers.~~

Approved March 13, 1997
Filed March 13, 1997

CHAPTER 401

SENATE BILL NO. 2075

(Natural Resources Committee)

(At the request of the Public Service Commission)

TRANSMISSION FACILITIES AND POWER EMERGENCIES

AN ACT to amend and reenact sections 49-22-03 and 49-22-07 of the North Dakota Century Code, relating to transmission facilities and power emergencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-22-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-22-03. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Certificate" means the certificate of site compatibility or the certificate of corridor compatibility issued under ~~the provisions of~~ this chapter.
2. "Commission" means the North Dakota public service commission.
3. "Construction" includes any clearing of land, excavation, or other action that would affect the environment of the site after April 9, 1975, but does not include activities incident to preliminary engineering or environmental studies.
4. "Corridor" means the general location of a transmission facility.
5. "Energy conversion facility" means any plant, addition, or combination of plant and addition, designed for or capable of:
 - a. Generation of fifty thousand kilowatts or more of electricity;
 - b. Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic meters] or more of gas per day, regardless of the end use of the gas;
 - c. Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or more of liquid hydrocarbon products per day; or
 - d. Enrichment of uranium minerals.
6. "Facility" means an energy conversion facility, transmission facility, or both.
7. "Permit" means the permit for the construction of a transmission facility within a designated corridor issued under ~~the provisions of~~ this chapter.

8. "Person" includes any individual, firm, association, partnership, cooperative, corporation, limited liability company, or any department, agency, or instrumentality of a state or of the federal government, or any subdivision thereof.
9. "Power emergency" means an electric transmission line and associated facilities that have been damaged or destroyed by natural or manmade causes resulting in a loss of power supply to consumers of the power.
10. "Route" means the specific location of a transmission facility within a designated corridor.
- ~~40.~~ 11. "Site" means the location of an energy conversion facility.
- ~~44.~~ 12. "Transmission facility" means any of the following:
- a. An electric transmission line and associated facilities with a design in excess of one hundred fifteen kilovolts. "Transmission facility" does not include a temporary transmission line loop that is:
 - (1) Connected and adjacent to an existing transmission facility that was sited under this chapter;
 - (2) Within the corridor of the sited facility and does not cross known exclusion or avoidance areas;
 - (3) Less than one mile long; and
 - (4) In place for less than one year.
 - b. A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, or carbon dioxide. ~~The provision of this~~ This subdivision does not apply to an oil or gas pipeline gathering system. For purposes of this chapter, a gathering system includes the pipelines and associated facilities used to collect oil from the lease site to the first pipeline storage site where pressure is increased for further transport, or pipelines and associated facilities used to collect gas from the well to the gas processing facility.
 - c. A liquid transmission line and associated facilities designed for or capable of transporting water from or to an energy conversion facility.
- ~~42.~~ 13. "Utility" means any person engaged in and controlling the generation, manufacture, refinement, or transmission of electric energy, gas, liquid hydrocarbons, or liquid hydrocarbon products, including; ~~but not limited to,~~ ~~to,~~ electric power generation or transmission, coal gasification, coal liquefaction, petroleum refinement, uranium enrichment, and the transmission of coal, gas, liquid hydrocarbons, or liquid hydrocarbon products, or the transmission of water from or to any energy conversion facility.

SECTION 2. AMENDMENT. Section 49-22-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-22-07. Certificate of site compatibility or route permit required. ~~No~~ A utility ~~shall~~ may not begin construction of an energy conversion facility or transmission facility in the state, or exercise the right of eminent domain in connection with ~~such that~~ such that construction, without first having obtained a certificate of site compatibility or a route permit from the commission pursuant to this chapter. ~~A~~ The facility ~~shall thereafter~~ must be constructed, operated, and maintained in conformity with ~~such the~~ the certificate or permit, and any terms ~~and~~ and conditions ~~contained therein and subsequent~~ contained therein and subsequent, or modifications ~~thereof~~ thereof of the certificate or permit. A certificate or permit may be transferred, subject to the approval of the commission, to any person who agrees to comply with its terms, conditions, and modifications.

If a power emergency exists which necessitates the relocation of a portion of an electric transmission line and associated facilities from the designated route, the owner of the line shall give telephonic notice to the commission in advance of the relocation. The line may then be relocated to restore power as soon as practicable. After the line has been relocated the owner shall file with the commission a request to approve the relocated route.

Approved March 7, 1997
Filed March 10, 1997

CHAPTER 402

SENATE BILL NO. 2328

(Senators St. Aubyn, Freborg, Lindaas)
(Representatives Carlson, Froseth, Skarphol)

ONE-CALL EXCAVATION NOTICE SYSTEM EFFECTIVE DATE

AN ACT to amend and reenact subdivision e of subsection 4 of section 49-23-03 of the North Dakota Century Code and section 9 of chapter 455 of the 1995 Session Laws, relating to the effective date for the one-call excavation notice system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ **SECTION 1. AMENDMENT.** Subdivision e of subsection 4 of section 49-23-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- e. The notification center must be in operation by ~~August~~ March 1, ~~1997~~ 1998.

SECTION 2. AMENDMENT. Section 9 of chapter 455 of the 1995 Session Laws is amended and reenacted as follows:

SECTION 9. EFFECTIVE DATE. Sections 2, 4, 6, 7, and 8 of this Act become effective on ~~August~~ March 1, ~~1997~~ 1998. Beginning August 1, 1996, operators and excavators shall plat locations and provide information to the board and the one-call notification center to enable the one-call notification center to begin operating on ~~August~~ March 1, ~~1997~~ 1998.

Approved March 19, 1997
Filed March 19, 1997

¹ Section 49-23-03 was also amended by section 21 of Senate Bill No. 2052, chapter 432.

PUBLIC WELFARE

CHAPTER 403

HOUSE BILL NO. 1041

(Legislative Council)

(Budget Committee on Human Services)

(Representatives Boucher, Sandvig, Svedjan)

(Senators Kelsh, O'Connell, Lips)

HUMAN SERVICES ADMINISTRATION AND FINANCING

AN ACT to create and enact four new sections to chapter 50-01.2, four new sections to chapter 50-03, a new subsection to section 50-06-05.1, a new section to chapter 50-06, a new section to chapter 50-24.1, and a new section to chapter 50-24.5 of the North Dakota Century Code, relating to the administration and financing of human services programs; to repeal sections 50-03-07, 50-09-16, 50-09-17, 50-09-18, 50-09-20, 50-09-20.1, 50-09-20.2, 50-09-21, 50-09-22, 50-24.1-03, and 50-24.5-06 of the North Dakota Century Code, relating to the administration and financing of human service programs; to require a legislative council study; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-01.2 of the North Dakota Century Code is created and enacted as follows:

Definitions. In this chapter, unless the context otherwise requires:

1. "Department" means the department of human services.
2. "Local expenses of administration" includes costs for personnel, space, equipment, computer software, costs associated with achieving caseload ratios of sixty-five cases to one worker, materials, travel, utilities, and related costs, and the indirect costs properly allocated to those costs. The term does not include initial acquisition of computers and related hardware approved by the department for the training, education, employment, and management program, custom computer programs, custom software development, computer operations undertaken at the direction of the department, and computer processing costs to the extent those costs exceed, in any calendar year, that county's costs of operation of the technical eligibility computer system in calendar year 1995 increased by the increase in the consumer price index for all urban consumers (all items, United States city average) after January 1, 1996, or, unless agreed to by the county social service board, any costs related to pilot programs before the programs are implemented on a statewide basis.

3. "Locally administered economic assistance programs" means those primary economic assistance programs that need to be accessible to all citizens of the state through a county social service office and include:
 - a. Temporary assistance for need families;
 - b. Child support enforcement programs;
 - c. Programs established under section 50-06-01.8;
 - d. Employment and training programs;
 - e. Child care assistance programs;
 - f. Medical assistance, including early periodic screening, diagnosis, and treatment;
 - g. Food stamp programs, including employment and training programs;
 - h. Refugee assistance programs;
 - i. Basic care services;
 - j. Energy assistance programs; and
 - k. Information and referral.

¹ **SECTION 2.** A new section to chapter 50-01.2 of the North Dakota Century Code is created and enacted as follows:

Standards of administration - Action upon failure to administer - Peer review committee - Appeal.

1. The department shall adopt standards for administration for locally administered economic assistance programs and shall provide training for the implementation of those standards. Each county social service board shall provide for administration of locally administered economic assistance programs that meet those standards.
2. If a county social service board fails to provide for administration of locally administered economic assistance programs that meet the standards adopted under subsection 1, the department may take any of the following actions:
 - a. Provide training to the persons responsible for administration.
 - b. Require the county social service board to prepare and implement a corrective action plan.

¹ Section 50-01.2-06 was also amended by section 22 of Senate Bill No. 2052, chapter 432.

- c. Appoint a receiver to act in place of the county social service board.
3. At least thirty days before taking any action under subsection 2, the department shall provide notice of its proposed action to the county social service board and the board of county commissioners of the affected county. The notice must describe the proposed action and the reasons therefor.
4. If the county disputes a notice of proposed action, the board of county commissioners, before the effective date of the action, shall:
 - a. Request reconsideration by the department;
 - b. Propose an alternative action under subsection 2;
 - c. Request a peer review; or
 - d. Make any combination of these responses.
5. If the county's response includes a request for reconsideration or proposed alternative action under subsection 2, the department promptly shall consider that request or proposal and notify the county of its determination.
6. If the county's response includes a request for a peer review, the board of county commissioners shall name two members of a peer review committee, the department shall name two members of the peer review committee, and those four committee members shall name a fifth member of the peer review committee. At least one member of the peer review committee must be a member of a board of county commissioners and at least two members of the peer review committee must be county social service board directors or former county social service board directors. No member of the peer review committee may hold or have held office as county social service board director, or as a member of the county social service board or board of county commissioners, or be a resident of the county requesting the peer review.
7. A peer review must be based upon written submissions made by the department and the county requesting the peer review. The county submission must be made within fifteen days after the county requests peer review, and the department's submission must be made within fifteen days after receipt of a copy of the county's submission. The peer review committee may direct written questions to the parties, and the parties shall respond in writing within fifteen days.
8. A committee member designated by the department shall chair the peer review committee. The committee shall meet at the call of the presiding officer, and may meet by teleconference. Any committee action must be by motion. A decision on the county's request must be made within sixty days after receipt of the county's request, and subject to subsection 9, is binding on both parties.
9. The decision of the peer review committee is a final administrative decision. That decision may be appealed to the district court, and for that purpose, the decision must be treated as a decision on a request for rehearing made pursuant to section 28-32-14. Appeal to the district

court must be taken in the manner required by section 28-32-15. The department shall submit a record consisting of:

- a. Submissions made, and questions asked and answered, under subsection 7; and
 - b. The motion and vote upon which the peer review committee acted to decide the matter.
10. A timely dispute of a notice to appoint a receiver under subsection 2 stays that action until thirty days after issuance of a decision by a peer review committee.
 11. A timely appeal of a decision by a peer review committee stays that decision until determination of that appeal.
 12. A receiver appointed under this section may take any action that may lawfully be taken by the county social service board and may draw upon the human services fund.
 13. Members of a peer review committee are entitled to receive compensation by the department in the same amounts as members of the legislative council. The county requesting the review shall reimburse the department for one-half of that cost.

SECTION 3. A new section to chapter 50-01.2 of the North Dakota Century Code is created and enacted as follows:

Board may contract. In addition to actions a county social service board may take under chapter 54-40, a board may contract with another county social service board, the receiver of a county social service board appointed under section 2 of this Act, the department, or any other public or private person to discharge any of its duties or exercise any of its powers to administer economic assistance programs.

SECTION 4. A new section to chapter 50-01.2 of the North Dakota Century Code is created and enacted as follows:

County duties - Financing in exceptional circumstances.

1. Each county social service board shall administer, under the direction and supervision of the department:
 - a. Locally administered economic assistance programs;
 - b. Replacement programs with substantially similar goals, benefits, or objectives; and
 - c. When necessary, experimental, pilot, or transitional programs with substantially similar goals, benefits, or objectives.
2. On or before February twenty-eighth of each year, each county shall report to the department the total amount of county funds expended in the previous year to meet the cost of providing human services required under this title and the number of mills that must have been levied by that county in the prior year to raise that total amount. Upon receipt of

reports from all counties, the department shall determine the statewide average of the mill levies and identify each county that levied ten mills more than that average. Each identified county is entitled to a share of funds appropriated for distribution under this subsection. Each identified county's share is determined by:

- a. Reducing its mill levy necessary to meet the costs of providing human services required under this title by the statewide average mill levy determined under this subsection plus ten mills;
 - b. Determining the amount that could have been raised in that county and year through a mill levy in the amount calculated under subdivision a;
 - c. Totaling the amounts determined under subdivision b for all counties entitled to a distribution;
 - d. Calculating a decimal fraction equal to each identified county's proportionate share of the total determined under subdivision c; and
 - e. Multiplying that decimal fraction times one-half of the biennial appropriation.
3. The department shall seek appropriations for the purpose of providing additional financial assistance to county social service boards for human service program costs and local expenses of administering human service programs in counties in which the presence of an Indian reservation substantially reduces the amount of property subject to taxation.

SECTION 5. A new section to chapter 50-03 of the North Dakota Century Code is created and enacted as follows:

Definitions. Terms defined in chapter 50-01.2 have the same meaning when used in this chapter.

SECTION 6. A new section to chapter 50-03 of the North Dakota Century Code is created and enacted as follows:

Appropriation for county social service board administration and programs.

The board of county commissioners of each county annually shall appropriate and make available to the human services fund an amount sufficient to pay:

1. The local expenses of administration of locally administered economic assistance programs; and
2. That county's share of fifteen percent of the amount expended in this state, in excess of the amount provided by the federal government, for medical assistance in the form of payments for care furnished to recipients of therapeutic foster care services; and
3. That county's share of the cost of other family preservation services, including intensive in-home services, provided under title VI-B, subpart 2, of the Social Security Act [Pub. L. 103-66, title XIII, 13711(a)(2); 107 Stat. 649, et seq.; 42 U.S.C. 629, et seq.], as amended, as may be agreed to by the department and the county social board.

SECTION 7. A new section to chapter 50-03 of the North Dakota Century Code is created and enacted as follows:

Department to develop formula. The department, with the cooperation of the boards of county commissioners, shall develop a formula to be used to determine the appropriate amount of each county's share under subsection 2 of section 6 of this Act.

SECTION 8. A new section to chapter 50-03 of the North Dakota Century Code is created and enacted as follows:

County commissions to make recommendations. Before August first of each year, the boards of county commissioners of the counties shall make a collective recommendation to the department concerning the distribution between counties, of the social service block grant funds, general fund equivalents of social service block grant funds, and child support incentive funds available to the department for distribution to county social service boards. The department shall consider the recommendation of the county commissioners in determining the distribution to the county social service boards, in the following calendar year, of the social service block grant funds, general fund equivalents of social service block grant funds, and child support incentive funds available to the department for that purpose.

SECTION 9. A new subsection to section 50-06-05.1 of the North Dakota Century Code is created and enacted as follows:

For purposes of administration of programs, and subject to legislative appropriation, funds are obligated at the time a written commitment is made to pay a vendor or contractor for services or supplies either delivered or to be delivered. This subsection applies to payments and commitments made on or after January 1, 1997.

SECTION 10. A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

Programs funded at state expense - Interpretation.

1. The state shall bear the cost, in excess of the amount provided by the federal government, of:
 - a. Except as provided in section 11 of this Act, services provided under chapter 50-24.1;
 - b. Benefits provided under subsection 19 of section 50-06-05.1;
 - c. Supplements provided under chapter 50-24.5 as basic care services;
 - d. Services provided under section 50-06-06.8 and chapter 50-09 as child care assistance;
 - e. Services provided under chapter 50-09 as employment and training programs;
 - f. Welfare fraud detection programs;
 - g. Temporary assistance for needy families; and

- h. Special projects approved by the department and agreed to by any affected county social service board.
2. This section does not grant any recipient of services, benefits, or supplements identified in subsection 1, any service, benefit, or supplement that a recipient could not claim in the absence of this section.

SECTION 11. A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

Responsibility for expenditures - Exceptions.

1. Except as otherwise specifically provided in subsection 2 and section 6 of this Act, expenditures required under this chapter are the responsibility of the federal government or the state of North Dakota.
2. Each county shall reimburse the department of human services the amount required to be appropriated under subsection 3 of section 6 of this Act.

SECTION 12. A new section to chapter 50-24.5 of the North Dakota Century Code is created and enacted as follows:

Responsibility for expenditures. Except as otherwise specifically provided in section 6 of this Act, expenditures required under this chapter are the responsibility of the state of North Dakota.

² **SECTION 13. REPEAL.** Sections 50-09-16, 50-09-17, 50-09-18, 50-09-20, 50-09-21, 50-09-22, and 50-24.1-03 of the North Dakota Century Code and sections 50-03-07, 50-09-20.1, 50-09-20.2, and 50-24.5-06 of the 1995 Supplement to the North Dakota Century Code are repealed.

SECTION 14. LEGISLATIVE COUNCIL STUDY OF CHILD SUPPORT SERVICES AND CHILD CARE LICENSING. The legislative council shall study the provision of child support services and child care licensing in this state during the 1997-98 interim. The study must consider whether child support services and child care licensing can be more efficiently and effectively provided and, if so, by which agency or unit of government. The legislative council shall report its findings,

² Section 50-09-16 was also repealed by section 78 of House Bill No. 1226, chapter 404; section 50-09-17 was also repealed by section 78 of House Bill No. 1226, chapter 404; section 50-09-20 was amended by section 66 of House Bill No. 1226, chapter 404, amended by section 67 of House Bill No. 1226, chapter 404, and repealed by section 79 of House Bill No. 1226, chapter 404; section 50-09-20.1 was amended by section 68 of House Bill No. 1226, chapter 404, and also repealed by section 79 of House Bill No. 1226, chapter 404; section 50-09-21 was amended by section 69 of House Bill No. 1226, chapter 404, amended by section 70 of House Bill No. 1226, chapter 404, and also repealed by section 79 of House Bill No. 1226, chapter 404; and section 50-09-22 was amended by section 71 of House Bill No. 1226, chapter 404, and repealed by section 78 of House Bill No. 1226, chapter 404.

together with any legislation required to implement the recommendations, to the fifty-sixth legislative assembly.

SECTION 15. COMPUTER DEVELOPMENT - BUDGET SECTION APPROVAL. Except as may be waived by approval of the budget section of the legislative council, the department of human services shall meet the requirements provided by the administration for children and families of the United States department of health and human services in its communication dated February 12, 1997, related to the state's development of the reforming and enhancing services for the people of North Dakota (RESPOND) and training, education, employment, and management (TEEM) projects. The requirements include information regarding client eligibility and expert system rules, cost benefit analysis for the TEEM and RESPOND projects, and a revised budget for the TEEM and RESPOND projects. The department of human services may not spend the related general fund appropriations provided by the fifty-fifth legislative assembly until the department receives assurances that the requirements will be met.

SECTION 16. EFFECTIVE DATE. Sections 1 through 11 of this Act become effective January 1, 1998.

Approved April 4, 1997
Filed April 4, 1997

CHAPTER 404

HOUSE BILL NO. 1226

(Human Services Committee)

(At the request of the Department of Human Services)

WELFARE REFORM

AN ACT to provide temporary requirements for administration of temporary assistance for needy families; to create and enact a new subsection to section 14-03-17, a new section to chapter 14-05, two new sections to chapter 14-08.1, five new sections to chapter 14-09, a new subsection to section 14-17-09, a new section to chapter 14-17, a new subsection to section 14-17-14, a new section to chapter 14-19, a new subsection to section 23-02.1-19, a new section to chapter 28-21, a new chapter to title 34, a new chapter to title 35, a new chapter to title 43, and ten new sections to chapter 50-09 of the North Dakota Century Code, relating to the implementation of federal welfare reform in North Dakota; to amend and reenact sections 11-17-07, 14-08.1-05, 14-08.1-06, 14-08.1-07, 14-09-08.1, 14-09-08.4, 14-09-08.6, 14-09-08.9, 14-09-08.10, 14-09-08.11, 14-09-08.13, 14-09-08.14, 14-09-09.3, subsection 4 of section 14-09-09.7, sections 14-09-09.10, 14-09-09.13, 14-09-09.14, 14-09-09.15, 14-09-09.16, 14-09-09.17, 14-09-09.24, 14-09-09.25, 14-17-10, subsection 4 of section 14-17-13, sections 14-17-16, 14-19-03, 14-19-05, 14-19-06, 14-19-10, subsection 5 of section 23-02.1-13, sections 50-06-01.4, 50-06-01.8, 50-09-01, 50-09-02, 50-09-02.1, 50-09-03, 50-09-06, 50-09-09, 50-09-14, 50-09-20, 50-09-20.1, 50-09-21, 50-09-22, and 50-09-24 of the North Dakota Century Code, relating to the implementation of federal welfare reform in North Dakota; to repeal sections 14-09-09.23, 50-06-06.8, 50-08.1-02, 50-09-16, 50-09-17, 50-09-20, 50-09-20.1, 50-09-21, and 50-09-22 of the North Dakota Century Code, relating to procedures for income withholding and the state and county shares of the cost of the aid to families with dependent children program; to provide a penalty; to provide a continuing appropriation; to provide an appropriation; to provide for a legislative council study; to provide for a statewide task force; to provide for the transfer of responsibilities; to provide for use of program savings and an informal grievance procedure; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-17-07 of the North Dakota Century Code is amended and reenacted as follows:

11-17-07. Decree of or judgment of divorce or, annulment, or paternity filed with registrar of vital statistics. The clerk of the district court in which any decree or judgment of divorce or, annulment of marriage, or paternity has been entered shall within fifteen days of the filing thereof notify the state registrar of vital statistics of the entry of the decree or judgment of divorce or, annulment of marriage, or paternity and shall furnish such information relating thereto as the state registrar may require upon such forms as may be furnished by the state registrar.

SECTION 2. A new subsection to section 14-03-17 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

Each application for a marriage license must contain the social security number of each applicant.

SECTION 3. A new section to chapter 14-05 of the North Dakota Century Code is created and enacted as follows:

Decree to include social security numbers. Each decree of divorce must include the social security numbers of the parties to the divorce.

SECTION 4. A new section to chapter 14-08.1 of the North Dakota Century Code is created and enacted as follows:

Definitions. Terms defined in chapter 14-09 have the same meaning when used in this chapter.

SECTION 5. AMENDMENT. Section 14-08.1-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-08.1-05. Support order to be judgment.

1. Any order directing any payment or installment of money for the support of a child is, on and after the date it is due and unpaid:
 - a. A judgment by operation of law, with the full force, effect, and attributes of a judgment of the district court, ~~including the ability to be entered in the judgment book pursuant to rule 58 of the North Dakota Rules of Civil Procedure~~ and must be entered in the judgment docket, upon filing by the judgment creditor or the judgment creditor's assignee of a written request accompanied by a verified statement of arrearage or certified copy of the payment records of the clerk of district court maintained under section 14-09-08.1 and an affidavit of identification of the judgment debtor, and otherwise enforced as a judgment;
 - b. Entitled as a judgment to full faith and credit in any jurisdiction which otherwise affords full faith and credit to judgments of the district court; and
 - c. Not subject to retroactive modification.
2. Failure to comply with the provisions of a judgment or order of the court for the support of a child constitutes contempt of court. All remedies for the enforcement of judgments apply. A party or the party's assignee may also execute on the judgment, and the obligor is entitled only to the exemptions from process set forth in section 28-22-02.
3. This section applies to all child support arrearages, whether accrued before or after the effective date of this section.

SECTION 6. A new section to chapter 14-08.1 of the North Dakota Century Code is created and enacted as follows:

Past due support - Plan of payment - Work activities.

1. In any case in which an individual owes past due child support, the court may, by order, require the individual to:

- a. Pay past due support in accordance with a plan approved by the court or the public authority;
 - b. If the individual is subject to such a plan and is not incapacitated, to participate in such work activities as the court deems appropriate; and
 - c. Participate in treatment for mental illness or drug or alcohol dependency.
2. For purposes of this section, "work activities" may include:
- a. Unsubsidized employment;
 - b. Subsidized private sector employment;
 - c. Subsidized public sector employment;
 - d. Work experience, including work associated with the refurbishing of publicly assisted housing, if sufficient private sector employment is not available;
 - e. On-the-job training;
 - f. Job search and job readiness assistance;
 - g. Community service programs;
 - h. Vocational educational training, not to exceed twelve months with respect to any individual;
 - i. Job skills training directly related to employment;
 - j. Education directly related to employment, in the case of an individual who has not received a high school diploma or a certificate of high school equivalency;
 - k. Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of an individual who has not completed secondary school or received such a certificate;
 - l. The provision of child care services to an individual who is participating in a community service program; and
 - m. Postsecondary education and any other activity treated by the federal government as work for purposes of calculating a work participation rate under 42 U.S.C. 607(b).

SECTION 7. AMENDMENT. Section 14-08.1-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-08.1-06. Suspension of occupational ~~or~~, professional, or recreational license for nonpayment of child support or failure to obey subpoena. When considering a contempt citation against a child support obligor who is ~~one thousand dollars or more~~ in arrears in child support in an amount greater than three times the monthly

child support obligation and the obligor is not current in a court-established plan to repay the unpaid child support arrears, or who has failed, after receiving appropriate notice, to comply with a subpoena relating to a paternity or child support matter, the court shall address and make specific findings on the issue of whether the obligor has or may obtain an occupational or a professional, or recreational certificate, permit, or license that the court may withhold or suspend for failure to pay child support. The court may withhold or suspend any certificate, permit, or license issued by or on behalf of the state or any of its licensing authorities or occupational or professional boards, which the obligor is required to obtain prior to engaging in the obligor's occupation or profession. The court may withhold or suspend any certificate, permit, or license issued by lottery or by tag by the director of the game and fish department, which the obligor is required to obtain prior to engaging in a recreational activity. Following a decision to withhold or suspend an obligor's certificate, permit, or license for failure to pay child support, the court shall notify the obligor that the decision becomes final thirty days after the notification unless the obligor satisfies or makes arrangements to pay the entire outstanding payment due. Following a decision to withhold or suspend an obligor's certificate, permit, or license for failure to comply with a subpoena relating to a paternity or child support matter, the court shall notify the obligor that the decision becomes final unless the obligor complies with the subpoena within a time set by the court. The court shall notify the appropriate licensing authority or occupational or professional board, or the director of the game and fish department of the court's decision to withhold or suspend an obligor's certificate, permit, or license. A certificate, permit, or license withheld or suspended by an order issued under this section may be reissued only by order of the court. An appeal by an obligor who has had a certificate, permit, or license suspended under this section is an appeal from the court's order and may not be appealed to the licensing authority or occupational or professional board, or the director of the game and fish department.

SECTION 8. AMENDMENT. Section 14-08.1-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-08.1-07. Suspension of motor vehicle operator's license for nonpayment of child support or failure to obey subpoena. When considering a contempt citation against a child support obligor ~~for failure to pay child support and the obligor who is one thousand dollars or more~~ in arrears in child support in an amount greater than three times the monthly child support obligation and the obligor is not current in a court-established plan to repay the unpaid child support arrears, or who has failed, after receiving appropriate notice, to comply with a subpoena relating to a paternity or child support matter, the court shall determine whether the obligor has a motor vehicle operator's license issued under chapter 39-06. The court may restrict or suspend a motor vehicle operator's license issued by the state which is held by the obligor. The court shall notify the department of transportation of the court's decision to restrict or suspend an obligor's motor vehicle operator's license. An appeal by an obligor who has had a motor vehicle operator's license restricted or suspended under this section is an appeal from the court's order and may not be appealed to the department of transportation. Except for statistical purposes, an entry on the driving record or abstract of a restriction or suspension under this section after the restriction or suspension ceases may not be available to the public other than by order of a court of competent jurisdiction. A suspension under this section is not subject to the financial responsibility reporting requirements.

SECTION 9. A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

State disbursement unit - Duties - Continuing appropriation.

1. The public authority shall establish a state disbursement unit for the collection and disbursement of payments of child support. The state disbursement unit is responsible for the collection and disbursement of all payments under child support orders.
2. The public authority may contract with any public or private entity for any service provided by the state disbursement unit. The state disbursement unit may employ technology and agents to allow receipt of child support payments at locations and times when state disbursement unit staff are not available.
3. The state disbursement unit shall use automated procedures, electronic processes, and computer-driven technology, including the statewide automated data processing system established under section 50-09-02.1, to the maximum extent feasible, efficient, and economical, for the collection and distribution of child support payments.
4. The state disbursement unit shall account for and disburse all support payments received by it, maintain necessary records, and develop procedures for providing information to the parties, including the obligor and obligee, regarding actions taken and, at least annually, regarding child support payments collected and distributed. The state disbursement unit shall adopt procedures for the maintenance and retention of records of child support payments, and for the storage and destruction of records when the support obligation is satisfied or is terminated.
5. The state disbursement unit shall establish a fund, known as the state disbursement unit fund. All child support payments received, except those payments assigned to the state, shall be deposited into the state disbursement unit fund, and all disbursements of child support, except those payments assigned to the state, must be made from the state disbursement unit fund.
6. The state disbursement unit shall disburse collected child support payments in conformity with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq.].
7. Unless notice has otherwise been provided, the state disbursement unit shall provide notice to the obligor, the obligee, and any income payor that payment must be made to the state disbursement unit.

SECTION 10. A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

Modification of existing child support orders - Requirements after September 30, 1998.

1. A child support order issued under any provision of this code and in effect on October 1, 1998, is deemed to require payment to the state disbursement unit after September 30, 1998.
2. A child support order issued under any provision of this code after September 30, 1998, must require payment to the state disbursement unit.

3. A payment of child support received by a clerk of court after September 30, 1998, is deemed to be a payment to the state disbursement unit. A clerk of court receiving such child support payment after September 30, 1998, shall promptly remit or transfer that payment to the state disbursement unit.

SECTION 11. A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

State disbursement unit fund - Continuing appropriation - Correction of errors.

All moneys deposited in the state disbursement unit fund are appropriated to the public authority for disbursement to obligees entitled to child support payments collected. Any disbursement made in error is not a gift and must be repaid. The public authority may take any action, not inconsistent with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq.] to secure repayment of any disbursement made in error.

SECTION 12. AMENDMENT. Section 14-09-08.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-09-08.1. Support payments - Payment to court or state disbursement unit - ~~Transfer of payment to court of recipient's residence~~ - Transfer of proceedings for enforcement of decree - Procedures upon failure to pay.

1. In any action in which a court orders that payments for child support be made, the court shall provide in its order that the payments be paid to the clerk of court, as trustee, or to the public authority, for remittance to the obligee. ~~The clerk shall remit the payments within ten working days of receipt unless the address of the obligee is unknown to the clerk.~~ The clerk shall maintain records listing the amount of the payments, the date when the payments must be made, the names and addresses of the parties subject to the order, and any other information necessary for the proper administration of the order: Upon the filing with in the statewide automated data processing system established under section 50-09-02.1. Before the system implementation date, upon notification that a party to the case is receiving services under title IV-D of the Social Security Act [42 U.S.C. 651 et seq.], or an assignment of support rights is in effect, the clerk of court of notice of the assignment of support rights to a state, payments must be credited and transmitted pursuant to the assignment and must credit and transmit payments in conformity with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651; et seq., as amended].
2. ~~a. The parties~~ Each party subject to the order shall immediately inform the clerk of court and the public authority of ~~their social security numbers and of the party's:~~
 - (1) Social security number;
 - (2) Residential and mailing addresses and any change of address or change;
 - (3) Telephone number;
 - (4) Motor vehicle operator's license number;

- (5) Employer's name, address, and telephone number; and
 - (6) Change of any other condition which may affect the proper administration of this chapter.
- b. The requirements of subdivision a must be incorporated into each order for payment of child support.
 - c. In any subsequent child support enforcement action between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of a party, service may be effected by delivery of written notice to the most recent residential or employer address provided by the noticed party pursuant to this subsection.
 - d. The requirements of this subsection continue in effect until all child support obligations have been satisfied with respect to each child subject to the order.
3. Whenever there is failure to make the payments as required, the clerk shall send notice of the arrears by first-class mail, with affidavit of service, to the person required to make the payments, or request a district judge of the judicial district, on a form provided by the judge, to issue a citation for contempt of court against the person who has failed to make the payments and the citation must be served on that person as provided by the North Dakota Rules of Civil Procedure.
 4. The court of its own motion or on motion of a child support agency or the state's attorney of the county of venue, the county of the recipient's residence, or the county of the obligor's residence may cause a certified copy of any support order in the action to be transcribed and filed with the clerk of the district court of any county in this state in which the obligee or the obligor may reside from time to time. Thereafter, ~~the provisions of this section apply~~ applies as if the support order were issued by the district court of the county to which the support order is transcribed. No fee may be charged for transcribing or filing a certified copy of any support order under this section.
 5. The clerk of court, at the option of the clerk, may deposit payments received by the clerk under this section, and not required to be paid to the state disbursement unit, in a special trust account in either the Bank of North Dakota or in a banking institution of this state designated as a depository of public funds under chapter 21-04 and make payments from the trust account to the obligee or the clerk may deposit payments received by the clerk under this section with the county treasurer and direct their disbursement under chapter 11-14.

SECTION 13. AMENDMENT. Section 14-09-08.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-09-08.1. Support payments - Payment to court - ~~Transfer of payment to court of recipient's residence~~ state disbursement unit - Transfer of proceedings for enforcement of decree - Procedures upon failure to pay.

1. In any action in which a court orders that payments for child support be made, the court shall provide in its order that the payments be paid to the ~~clerk of court, as trustee,~~ state disbursement unit for remittance to

the obligee. The clerk shall remit the payments within ten working days of receipt unless the address of the obligee is unknown to the clerk. The clerk shall maintain records listing the amount of the payments, the date when the payments must be made, the names and addresses of the parties subject to the order, and any other information necessary for the proper administration of the order. Upon the filing with the clerk of court of notice of the assignment of support rights to a state, payments must be credited and transmitted pursuant to the assignment and in conformity with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2354; 42 U.S.C. 654, et seq., as amended].

2.
 - a. The parties Each party subject to the order shall immediately inform the clerk state disbursement unit of their social security numbers and of the party's:
 - (1) Social security number;
 - (2) Residential and mailing addresses and any change of address or change;
 - (3) Telephone number;
 - (4) Motor vehicle operator's license number;
 - (5) Employer's name, address, and telephone number; and
 - (6) Change of any other condition which may affect the proper administration of this chapter.
 - b. The requirements of subdivision a must be incorporated into each order for payment of child support.
 - c. In any subsequent child support enforcement action between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of a party, service may be effected by delivery of written notice to the most recent residential or employer address provided by the noticed party pursuant to this subsection.
 - d. The requirements of this subsection continue in effect until all child support obligations have been satisfied with respect to each child subject to the order.
3. Whenever there is failure to make the payments as required, the ~~clerk~~ state disbursement unit shall send notice of the arrears by first-class mail, with affidavit of service, to the person required to make the payments, or request a district judge of the judicial district, on a form provided by the judge, to issue a citation for contempt of court against the person who has failed to make the payments and the citation must be served on that person as provided by the North Dakota Rules of Civil Procedure.
4. The court of its own motion or on motion of a child support agency or the state's attorney of the county of venue, the county of the recipient's residence, or the county of the obligor's residence may cause a certified copy of any support order in the action to be transcribed and filed with the clerk of the district court of any county in this state in which the obligee or the obligor may reside from time to time. Thereafter, ~~the~~

~~provisions of this section apply~~ applies as if the support order were issued by the district court of the county to which the support order is transcribed. No fee may be charged for transcribing or filing a certified copy of any support order under this section.

5. ~~The clerk of court, at the option of the clerk, may deposit payments received by the clerk under this section in a special trust account in either the Bank of North Dakota or in a banking institution of this state designated as a depository of public funds under chapter 21-04 and make payments from the trust account to the obligee or the clerk may deposit payments received by the clerk under this section with the county treasurer and direct their disbursement under chapter 11-14.~~

SECTION 14. AMENDMENT. Section 14-09-08.4 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-09-08.4. Periodic review of child support orders.

1. Each child support order must be reviewed by the child support agency no less frequently than thirty-six months after the establishment of the order or the most recent amendment or review of the order by the court or child support agency unless:
 - a. In the case of an order with respect to which there is in effect an assignment under ~~section 50-09-06 or 50-09-06.1, subsection 2 of section 50-24.1-02, or section 50-24.1-02.1~~ chapter 50-09 or 50-24.1, the child support agency has determined that a review is not in the best interests of the child and neither the obligor nor the obligee has requested review; or
 - b. In the case of any other order neither the obligor nor the obligee has requested review.
2. Each child support order, in which there is in effect an assignment under chapter 50-09 or with respect to which either the obligor or the obligee has requested review, must be reviewed by the child support agency if:
 - a. More than twelve months have passed since the establishment of the order or the most recent amendment or review of that order by the court or child support agency, whichever is later; and
 - b. The order provides for no child support and was based on a finding that the obligor has no ability to pay child support.
3. If, upon review, the child support agency determines that the order provides for child support payments in an amount that is inconsistent with the amount that would be required by the child support guidelines established under subsection 1 of section 14-09-09.7, the child support agency may seek an amendment of the order. If the order provides for child support payments in an amount less than eighty-five percent of the amount that would be required by those guidelines, the child support agency shall seek an amendment of the order.
4. If a child support order sought to be amended was entered at least one year before the filing of a motion or petition for amendment, the court shall order the amendment of the child support order to conform the

amount of child support payment to that required under the child support guidelines, whether or not the motion or petition for amendment arises out of a periodic review of a child support order, and whether or not a material change of circumstances has taken place, unless the presumption that the correct amount of child support would result from the application of the child support guidelines is rebutted. If a motion or petition for amendment is filed within one year of the entry of the order sought to be amended, the party seeking amendment must also show a material change of circumstances.

4. 5. A determination that a child who is the subject of a child support order is eligible for benefits furnished under subsection 18 or 20 of section 50-06-05.1, chapter 50-09, or chapter 50-24.1, or any substantially similar program operated by any state or tribal government, constitutes a material change of circumstances. The availability of health insurance at reasonable cost to a child who is the subject of a child support order constitutes a material change of circumstances. The need to provide for a child's health care needs, through health insurance or other means, constitutes a material change of circumstances.

SECTION 15. AMENDMENT. Section 14-09-08.6 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-09-08.6. Obligor's duties upon review - Failure to provide information.

1. The obligor shall provide information to the child support agency concerning the obligor's income, which is sufficient to accomplish the review, no later than five working days before the date of review. The information must be furnished by:
 - a. Providing an income report, in the form and manner required by the child support agency, accurately completed and attested to by the obligor;
 - b. Providing a verified copy of the latest income tax return, filed with the internal revenue service or any state official administering a state income tax, which accurately reports the obligor's income for a fiscal year ending no more than seventeen months prior to the date of the review; or
 - c. Providing a written authorization by which the child support agency may secure a verified copy of the latest income tax return, filed with the tax commissioner, which accurately reports the obligor's income for a fiscal year ending no more than seventeen months prior to the date of review.
2. ~~If information concerning the obligor's income sufficient to accomplish the review has not been received by the child support agency by the fifth working day before the date of review, the child support agency shall provide to the tax commissioner an affidavit stating the obligor's name and address, that a review of the obligor's child support obligation is pending, that notice requesting income information has been given as required by law, and that the required information has not been furnished on a timely basis. Notwithstanding the provisions of section 57-38-57 or other confidentiality statutes, upon receipt of an affidavit provided for in this subsection, the tax commissioner may provide to a~~

child support agency a verified copy of the latest income tax return, filed with the office of the commissioner, which reports the obligor's income. The information obtained by a child support agency from the tax commissioner, in accordance with this section, retains its confidentiality and may only be used by a child support agency in the pursuit of its child support collection duties and practices. The tax commissioner may require a child support agency to make assurances, satisfactory to the commissioner, that the agency has the ability to comply with this subsection.

3. If information concerning the obligor's income sufficient to accomplish the review has not been timely furnished by the obligor ~~and is not available from the office of the tax commissioner~~, the child support agency may apply to the court for an order compelling the obligor to furnish information sufficient to accomplish the review.
4. 3. If an application to the court made pursuant to subsection ~~3~~ 2 has not resulted in the production of information concerning the obligor's income sufficient to accomplish the review, the child support agency may base its review determination on the assumption that the obligor's income has increased at the rate of ten percent per year since the child support order under review was entered or last modified.

SECTION 16. AMENDMENT. Section 14-09-08.9 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.9. Request for review - Notice of right to request review. An obligor or an obligee may request review under section 16 of chapter 148 of the 1989 Session Laws or section 14-09-08.4, by applying to the child support agency for child support services, and indicating, in the manner there provided, a desire to have a child support order reviewed. Each judgment or order issued by a court in this state which includes an order for child support must include a statement advising of the right to request a review under this section. If a party to a child support matter is receiving services from the child support agency and an order for current child support has issued out of that matter, the child support agency shall provide notice of the right to request a review or further review of that child support order, to the obligor and obligee, not more than three years after the most recent child support order, review of that child support order, or notice of right to request a review of that child support order.

SECTION 17. AMENDMENT. Section 14-09-08.10 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.10. Order. Each order entered under this code for the support of a minor child must include a provision for health insurance coverage for that child.

1. Unless the obligee has comparable or better group dependent health insurance coverage available at no or nominal cost, the court shall order the obligor to name the minor child as beneficiary on any health insurance plan that is available to the obligor at no or nominal cost. Except as provided in subsection 2, the order must require the obligor to provide satisfactory health insurance coverage whenever that coverage is available at reasonable cost or becomes available at reasonable cost.
2. ~~If the court finds that dependent health insurance is not available to the obligor or the obligee at no or nominal cost, the court may require the~~

~~obligor to obtain dependent health insurance, or to be liable for reasonable and necessary medical expenses of the child. If the obligee is an individual with physical custody of the child, the obligee must be required to provide satisfactory health insurance whenever that coverage is available at no or nominal cost.~~

SECTION 18. AMENDMENT. Section 14-09-08.11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-09-08.11. Eligible child - Employer to permit enrollment.

1. When an obligor is required to cover a minor child as a beneficiary under section 14-09-08.10, the child is eligible for health insurance coverage as a dependent of the obligor until the child's eighteenth birthday or until further order of the court. If health insurance coverage required under section 14-09-08.10 is available through an income payer, the income payer must:
 4. a. Permit the obligor to enroll under family coverage any child who is otherwise eligible for coverage without regard to any open enrollment restrictions;
 2. b. If the obligor is enrolled but fails to make application to obtain coverage for the child, enroll the child under family coverage upon application by the obligee;
 - c. If the obligor is enrolled but fails to make application to obtain coverage for the child, enroll the child under family coverage upon application to the public authority, subject to subsection 2, whenever the child receives:
 - (1) Benefits through a demonstration project established under section 50-06-01.8, temporary assistance for needy families or foster care under chapter 50-09, or medical assistance under chapter 50-24.1; or
 - (2) Services provided upon application of an obligee to the child support agency;
3. d. Not disenroll or eliminate coverage for any child unless the income payer is provided satisfactory written evidence that:
 - a. (1) The order issued under section 14-09-08.10 is no longer in effect;
 - b. (2) The child is or will be enrolled in comparable coverage that will take effect no later than the effective date of disenrollment; or
 - e. (3) The income payer has eliminated family health coverage for all of its employees; ~~and~~
4. e. Withhold from the obligor's compensation the obligor's share, if any, of premiums for health insurance coverage and pay this amount to the health insurance provider; and

5. f. If the amount required to be withheld under ~~subsection 4 subdivision e~~, either alone or when added to the total of any withholding required by an order issued under section 14-09-09.15, exceeds fifty percent of the obligor's disposable income, withhold fifty percent of the obligor's disposable income.
2. Before making application under subdivision c of subsection 1, the public authority shall provide notice to the obligor that the obligor may contest the proposed application by filing a written request for a hearing within ten days of the date the notice is issued. If the obligor contests the application for coverage, a hearing must be held, and the court shall require the public authority to make application if it determines coverage for the child is available to the obligor at reasonable cost.
3. Withholding required by an order issued under section 14-09-09.15 must be satisfied before any payment is made to the health insurance provider. If the amount remaining is insufficient to pay the obligor's share of premiums for health insurance coverage, the obligor may authorize additional withholding to pay the obligor's share. If the obligor does not authorize additional withholding, and the health insurance coverage will lapse as a result, the income payer must promptly inform the clerk of court that issued the order under section 14-09-09.15 of the insufficiency.

SECTION 19. AMENDMENT. Section 14-09-08.13 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.13. Application for service. The child support agency responsible for support enforcement shall take necessary steps to implement, modify, and enforce an order for dependent health insurance whenever the children receive ~~aid to families with dependent children~~ benefits through a demonstration project established under section 50-06-01.8, temporary assistance for needy families or foster care under chapter 50-09 or medical assistance under chapter 50-24.1, or upon application of the obligee to the child support agency and payment by the obligee of any required application fee.

SECTION 20. AMENDMENT. Section 14-09-08.14 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.14. Public authority to establish criteria. The public authority shall establish criteria to identify cases involving children who received ~~aid to families with dependent children~~ benefits through a demonstration project established under section 50-06-01.8, temporary assistance for needy families or foster care under chapter 50-09 or medical assistance under chapter 50-24.1, or where an application to the child support agency has been completed by an obligee and where there is a high potential for obtaining medical support based on:

1. Evidence that health insurance may be available to the obligor at reasonable cost; and
2. Facts that are sufficient to warrant modification of the existing court order to include health insurance coverage for a dependent child.

SECTION 21. A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

Coordination of income withholding activities. The public authority shall assume responsibility for administration of income withholding and the receipt and disbursement of child support payments.

SECTION 22. AMENDMENT. Section 14-09-09.3 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.3. Child support - Duties and liabilities of income payor under income withholding order.

1. Any income payor failing to comply with any requirements in section 14-09-09.16 may be punished by the court for civil contempt. The court shall first afford such income payor a reasonable opportunity to purge itself of such contempt.
2. Any income payor who fails or refuses to deliver income pursuant to an income withholding order, when such income payor has had in its possession such income, is personally liable for the amount of such income which the income payor failed or refused to deliver, together with costs, interest, and reasonable attorney's fees.
3. Any employer who refuses to employ, dismisses, demotes, disciplines, or in any way penalizes an ~~obligor-employee~~ obligor on account of any proceeding to collect child support, on account of any order or orders entered by the court in such proceeding, on account of the employer's compliance with such order or orders, or on account of an income withholding order, is liable to the ~~obligor-employee~~ obligor for all damages, together with costs, interest thereon, and reasonable attorney's fees resulting from the employer's action. The employer may be required to make full restitution to the aggrieved ~~obligor-employee~~ obligor, including reinstatements and backpay.
4. An income payor may be enjoined by a court of competent jurisdiction from continuing any action in violation of section 14-09-09.16.
5. Any proceeding against an income payor under this section must be commenced within ninety days after the income payor's act or failure to act upon which such proceeding is based.
6. Compliance by an income payor with an income withholding order operates as a discharge of the income payor's liability to the obligor as to that portion of the obligor's income so affected.
7. In considering an income withholding order issued by a court or administrative tribunal in a state other than the state of the obligor's principal place of employment, the income payor shall apply the law of the state of the obligor's principal place of employment in determining any withholding terms and conditions not specified in the income withholding order or in section 14-12.2-33.1.
8. An employer who complies with an income withholding order that is regular on its face is not subject to civil liability to any individual or agency for conduct in compliance with the order.

SECTION 23. AMENDMENT. Subsection 4 of section 14-09-09.7 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. The department shall ~~review~~ institute a new rulemaking proceeding under section 28-32-02 relating to the child support guidelines periodically, as the department determines necessary, but at least once every four years, to ensure that the application of the guidelines results in the determination of appropriate child support award amounts. The initial rulemaking proceeding must be commenced with a notice of proposed adoption, amendment, or repeal by August 1, 1998, and subsequent rulemaking proceedings must be so commenced at least once every four years thereafter. Before commencing any rulemaking proceeding under this section, the department shall convene a drafting advisory committee that includes two members of the legislative assembly appointed by the chairman of the legislative council.

SECTION 24. A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

Monthly amount due. The total amount of child support due in each month is the sum of:

1. The obligor's current monthly support obligation; and
2. a. The amount the obligor is ordered to pay toward any outstanding arrearage; or
 - b. If no order to repay an arrearage exists, an amount for application to any arrearage, subject to the limitations of section 14-09-09.16, equal to:
 - (1) Twenty percent of the obligor's current monthly support obligation; or
 - (2) If there is no current monthly support obligation, the most recent monthly support obligation.

SECTION 25. AMENDMENT. Section 14-09-09.10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-09-09.10. Definitions. For the purposes of this chapter, unless the context or subject matter otherwise requires:

1. "Business day" means every day that is not a Saturday or legal holiday.
2. "Child support" means payments for the support of children and combined payments for the support of children and spouses or former spouses, however denominated, if the payment is required by the order of a court or other governmental agency having authority to issue such orders.
2. 3. "Child support agency" means the county social service board, any combination of county social service boards, or any entity created by a county social service board or any combination of county social service

boards, in execution of the county social service board's duties under subsection 5 of section 50-09-03.

- ~~3.~~ 4. "Delinquent" means a situation which occurs on the first working day after the day upon which a child support payment was identified as due and unpaid, and the total amount of unpaid child support is at least equal to the amount of child support payable in one month.
- ~~4.~~ 5. "Disposable income" means gross income less deductions required by law for taxes and social security.
6. "Employer" means income payor.
- ~~5.~~ 7. "Health insurance" includes fees for service, health maintenance organization, preferred provider organization, comprehensive health association plan, accident and health insurance policies, group health plans as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 [Pub. L. 99-272; 100 Stat. 281; 29 U.S.C. 1167(1)], and other types of coverage under which major medical coverage may be provided in a policy, plan, or contract which may legally be sold or provided in this state.
- ~~6.~~ 8. "Income" means any form of payment, regardless of source, owed to an obligor, including any earned, unearned, taxable or nontaxable income, workers' compensation, disability benefits, unemployment compensation benefits, annuity and retirement benefits, but excluding public assistance benefits administered under state law.
- ~~7.~~ 9. "Income payor" means any person, partnership, firm, corporation, limited liability company, association, political subdivision, or department or agency of the state or federal government owing income to an obligor and includes an obligor if the obligor is self-employed.
- ~~8.~~ 10. "Obligee" means a person including a state or political subdivision to whom a duty of support is owed.
- ~~9.~~ 11. "Obligor" means any person owing a duty of support.
12. "Past due support" means child support that is not paid by the earlier of:
- a. The date a court order or an order of an administrative process established under state law requires payment to be made; or
 - b. The last day of the month or other period the payment was intended to cover.
- ~~40.~~ 13. "Payday" means the day upon which the income payor pays or otherwise credits the obligor.
14. "Public authority" means the department of human services in execution of its duties pursuant to ~~subsection 12 of section 50-09-02~~ the state plan submitted under chapter 50-09 in conformance with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq.].

15. "System implementation date" means the date the public authority certifies to the secretary of state and the legislative council that the statewide automated data processing system, established under section 50-09-02.1, is operating.

SECTION 26. AMENDMENT. Section 14-09-09.13 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-09-09.13. Procedure - Notice to obligor. If immediate income withholding under section 14-09-09.24 has not been implemented and an obligor is delinquent, if an obligee's request for income withholding is approved, or if a court changes its finding that there is good cause not to require immediate income withholding, the clerk of court shall serve a notice and a copy of section 14-09-09.14 on the obligor by first-class mail. The notice must be sent within five working days of the appropriate date under subsection 7 if the obligor's address is known to the clerk on that date or, if the address is unknown on that date, within five working days after the clerk is informed of the obligor's address or public authority shall serve the notice required under this section upon the obligor whenever issuing an income withholding order. The notice must state:

1. That the obligor is delinquent in the payment of child support, that a request for withholding has been made by the obligee and approved by a child support agency, or that there is no longer good cause not to require immediate income withholding, as the case may be, and the obligor is therefore subject to an income withholding order on all income.
2. The amount of child support owed and the amount of arrearage, if any.
3. The total amount of money that will be withheld by the income payor from the obligor's income in each month and that the amount is the sum of both of the following:
 - a. The obligor's current monthly support obligation.
 - b. The amount the obligor is ordered to pay toward any outstanding arrearage, or if no order to repay an arrearage exists, then an amount equal to twenty percent of the obligor's current monthly support obligation, if any, or equal to the most recent monthly support obligation if there is no current monthly support obligation, for application towards any arrearage subject to the limitations of section 14-09-09.16 as determined under section 24 of this Act.
4. That the income payor may withhold an additional sum of three dollars to cover the income payor's expenses.
5. That if not contested pursuant to section 14-09-09.14, the income withholding order will be has been issued immediately, without further order of the court.
6. That the obligor may contest the issuance of the income withholding order by filing a written request for hearing within ten days of the date of the notice made under this section.

7. That if the obligor contests the income withholding order pursuant to section 14-09-09.14, a hearing will be held and the court will determine and issue an order consistent with the requirements of section 14-09-09.14.
8. That the income withholding order applies to any current or subsequent income payor or period of employment.
9. ~~The date the income of the obligor is subject to income withholding, which is the earliest of:~~
 - a. ~~The date the obligor requests income withholding.~~
 - b. ~~The date on which an approved income withholding request is made by the obligee.~~
 - c. ~~The date the child support obligation becomes delinquent.~~

SECTION 27. AMENDMENT. Section 14-09-09.14 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.14. Hearing upon obligor's request.

1. If the obligor files a request for a hearing within ten days of the date of the notice made pursuant to section 14-09-09.13, the court shall hold a hearing within ten working days after the date of the request. ~~#~~
 - a. The court may order that the income withholding order be withdrawn if at the hearing the obligor establishes:
 - a. (1) In a case where withholding would be based on an alleged delinquency, that there has been a mistake in the identity of the obligor; or
 - b. (2) In a case where an approved request for withholding has been made by the obligee, that the approval of the request constituted an abuse of discretion;~~the court may order that no income withholding order issue.~~
 - b. If at the hearing the obligor establishes that there is an overstatement in the amount of support stated to be owed by the obligor, the court may amend the amount to be withheld.
 - c. In the absence of a finding of a mistake of fact in a case where withholding would be based on an alleged delinquency, or in the absence of an abuse of discretion in the approval of an obligee's request for withholding, the court shall ~~order that~~ confirm the income withholding order ~~issue~~. Payment of overdue past due support after issuance of notice under section 14-09-09.13 may not be the basis for an order that ~~no~~ the income withholding order ~~issue be withdrawn~~.
2. An obligor is not precluded, by subsection 1, from seeking appropriate relief from a judgment or order affecting a child support obligation nor is the court precluded from granting such relief. An obligor's request for

such relief, whether made by motion under rule 60(b) of the North Dakota Rules of Civil Procedure or otherwise, may not be considered during the hearing described in subsection 1.

SECTION 28. AMENDMENT. Section 14-09-09.15 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.15. Form - Effect of income withholding order. The income withholding order must be issued in the name of the state of North Dakota, be attested in the name of the judge, ~~sealed with the seal of the court~~, subscribed by the clerk or a designee of the public authority, and directed to all current and subsequent income payors of the obligor. The income withholding order is binding on the income payor until further notice by the clerk or the public authority and applies to all current and subsequent periods in which income is owed the obligor by the income payor. The income withholding order has priority over any other legal process against the same income.

SECTION 29. AMENDMENT. Section 14-09-09.16 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-09-09.16. Service of income withholding order on income payor. The clerk of court or the public authority shall serve the income withholding order ~~and a copy of sections 14-09-09.3 and 14-09-09.15~~ on the income payor in the manner provided for service of a summons in a civil action and upon the obligor by first-class mail to the obligor's last known address; ~~within fifteen days of the date of the notice made pursuant to section 14-09-09.13, unless the obligor has contested that notice within ten days of the date of that notice. If a hearing was held under section 14-09-09.14, the income withholding order and the copy of sections 14-09-09.3 and 14-09-09.15 must be served within five working days of the date of the court's determination.~~ If the obligor is subject to immediate income withholding under section 14-09-09.24, an income withholding order ~~and a copy of sections 14-09-09.3 and 14-09-09.15~~ must be served on any known income payor within five working business days of the issuance of the judgment or order which requires the payment of child support. Subject to the provisions of section 14-09-09.17, if service of an income withholding order has been or may have been properly made under this section, an income withholding order ~~and a copy of sections 14-09-09.3 and 14-09-09.15~~ must be served on any subsequently identified income payor within five working business days after the ~~clerk issuer~~ is informed of the name and address of such an income payor. An income withholding order may also be issued and served at the request of the obligor. The income withholding order ~~shall~~, upon certification by the public authority to the secretary of state and the legislative council that the secretary of the United States department of health and human services, under authority of 42 U.S.C. 666(b)(6)(A)(ii), has prescribed a standard format for notice of the order, must be in that standard format and contain only the information necessary for the income payor to comply with the withholding order. Before that certification, the income withholding order must state all of the following:

1. That the obligor is properly subject to an income withholding order and that the income payor is therefore required to withhold a stated amount, determined under ~~subsection 3 of section 14-09-09.13~~ 24 of this Act, from the obligor's income at the time the obligor is paid for transmittal to the clerk of court or the public authority within ~~ten working~~ seven business days of the date the obligor is paid, together with a report of the date upon which the amount was withheld from the obligor's income.

2. That the income payor may also withhold and retain an additional sum of three dollars per month from the obligor's income to cover expenses involved in transmitting payment.
3. That the amount to be withheld, including amounts to cover expenses involved in transmitting payment, may not exceed fifty percent of the obligor's disposable income from this income payor, but a payment of an amount less than the ordered amount must be accompanied by a written calculation disclosing any of the obligor's income and disposable income which is payable by the income payor.
4. That the income payor shall begin withholding no later than the first ~~pay period~~ payday that occurs ~~fourteen days~~ after service of the income withholding order.
5. That if the income payor is served with more than one income withholding order issued under this chapter on a single obligor and the combined total amount to be paid under the income withholding orders exceeds fifty percent of the obligor's disposable income the income payor shall withhold the maximum amount permitted, and transmit to the clerk of court or the public authority that portion thereof which the obligee's claim bears to the combined total of all claims.
6. That the income payor shall notify the clerk of court or the public authority in writing of the termination of a duty to pay income to the obligor within ~~fifteen~~ seven business days of ~~such~~ the termination. ~~Such~~ The notification must include the name and address of the obligor's subsequent income payor, if known.
7. That if the income payor is subject to income withholding orders for more than one obligor:
 - a. Prior to the system implementation date, the income payor may combine in a single payment the amounts for all obligors who have been ordered to pay the same clerk of court with identification of the amount attributable to each obligor; and
 - b. Thereafter the income payor may combine in a single payment the amounts for all obligors who have been ordered to pay the public authority with identification of the amount attributed to each obligor.
8. That failure to comply with the income withholding order will subject the income payor to penalties provided under section 14-09-09.3.
9. That the withholding order has priority over any other legal process under state law against the same wages.
10. If appropriate, that the obligor is required to provide health insurance coverage for a child who is the subject of a child support order.
11. ~~When an obligor employed by an income payor terminates that employment, the income payor must promptly so notify the clerk and provide the obligor's last known address and the name and address of the obligor's new employer, if known.~~

SECTION 30. AMENDMENT. Section 14-09-09.17 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-09-09.17. Amendment - Termination of income withholding order. Upon amendment or termination of an income withholding order, the clerk of court or the public authority shall send appropriate notice to the income payor. An income withholding order is to be amended by the clerk or the public authority when the total amount of money to be withheld is changed by elimination of arrearages or by court-ordered change in amount of child support. An income withholding order is to be terminated when the duty to support ceases and all child support arrearages have been paid. When two or more income payors have been subjected to income withholding orders with respect to a child support obligation, the clerk or the public authority shall suspend the income withholding order directed to one or more income payors, provided that the amount of child support withheld by the remaining income payor or payors equals the amount determined under ~~subsection 3 of section 14-09-09.13~~ 24 of this Act. The clerk or the public authority shall immediately reinstate any suspended income withholding order should any child support obligation of the obligor thereafter become delinquent. The clerk or the public authority shall provide a copy of the reinstated income withholding order, by first-class mail, to the obligor and the income payor.

SECTION 31. AMENDMENT. Section 14-09-09.24 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.24. Immediate income withholding.

1. Except as provided in subsection 2, each judgment or order which requires the payment of child support, issued or modified on or after January 1, 1990, subjects the income of the obligor to income withholding, regardless of whether the obligor's support payments are delinquent.
2. If a party to a proceeding, who would otherwise be subject to immediate income withholding under subsection 1, demonstrates, and the court finds that there is good cause not to require immediate withholding, or if the parties, including any assignee of support rights, reach a written agreement that provides for an alternative arrangement for assuring the regular payment of child support, the court need not subject the income of the obligor to immediate withholding.
3. A finding that there is good cause not to require immediate income withholding must be based on at least:
 - a. A written determination that, and an explanation of why, implementing immediate income withholding would not be in the best interests of the child;
 - b. Proof of timely payment of previously ordered support; and
 - c. Requirement A requirement that the obligor keep the clerk and the public authority informed of ~~the name and address of each of the obligor's current and future income payors and~~ of any employment-related health insurance to which the obligor has access.

4. A written agreement for an alternative arrangement for assuring the regular payment of child support is effective only if the agreement at least, in addition to other conditions the parties agree to:
 - a. Provides that the obligor shall keep the clerk and the public authority informed of ~~the name and address of each of the obligor's current and future income payors and~~ of any employment-related health insurance to which the obligor has access;
 - b. Describes the provisions by which regular payment of child support is assured; and
 - c. Is reviewed and approved by the court and entered into the court's records.

SECTION 32. AMENDMENT. Section 14-09-09.25 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.25. Requests by obligee for income withholding - Approval - Procedures and standards.

1. An obligee may apply to a child support agency for approval of an income withholding request. The income of the obligor becomes subject to income withholding on the date an approved request is made.
2. The public authority shall establish procedures and standards for the approval of obligee requests for income withholding. The standards established must include consideration of:
 - a. An obligor's threat to discontinue child support payments; and
 - b. An obligor's having made child support payments sufficient to avoid a delinquency, but insufficient to conform to the ordered amount.
3. Upon application of an obligee requesting income withholding, the child support agency shall promptly approve or disapprove the request. The child support agency may not approve the obligee's request in a case where the court has determined that there is good cause not to require immediate income withholding unless the court first changes its determination. ~~Each approved request must be transmitted promptly to the clerk of court.~~

SECTION 33. A new subsection to section 14-17-09 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

In any pretrial proceeding, upon motion by any party, the court shall order child support to be paid pending a final determination of paternity if there is clear and convincing evidence of paternity, based on genetic tests or otherwise. If the action is brought at the direction of the department of human services and the final determination of paternity results in the nonexistence of a father and child relationship between the child and a party who was ordered to pay child support under this subsection, that party may seek reimbursement from the department for that amount and the department is subrogated to that party's claim.

SECTION 34. AMENDMENT. Section 14-17-10 of the North Dakota Century Code is amended and reenacted as follows:

14-17-10. Genetic test.

1. The court may, and upon request of a party shall, require the child, mother, or alleged father to submit to genetic tests, including tests of blood or other tissues. The tests must be performed:
 - a. Of a type generally acknowledged as reliable by accreditation bodies designated by the secretary of the United States department of health and human services;
 - b. Performed by a laboratory approved by such an accreditation body; and
 - c. Performed by an expert qualified as an examiner of genetic data or specimens, appointed by the court.
2. The court, upon reasonable request by a party, shall order that independent tests be performed by other experts qualified as examiners of genetic data or specimens.
3. In all cases, the court shall determine the number and qualifications of the experts.

SECTION 35. AMENDMENT. Subsection 4 of section 14-17-13 of the North Dakota Century Code is amended and reenacted as follows:

4. The trial must be by the court without a jury ~~unless either party demands trial by jury.~~

SECTION 36. A new section to chapter 14-17 of the North Dakota Century Code is created and enacted as follows:

Evidence relating to costs of pregnancy, childbirth, and genetic testing.

1. Extrinsic evidence of authenticity as a condition precedent to admissibility is not required of billings by service providers for services relating to pregnancy, childbirth, and genetic testing.
2. Billings by service providers for services relating to pregnancy, childbirth, and genetic testing constitute prima facie evidence of the costs of those services.

SECTION 37. A new subsection to section 14-17-14 of the North Dakota Century Code is created and enacted as follows:

The judgment or order must include the social security numbers of the child and of individuals determined to be the child's parents.

SECTION 38. AMENDMENT. Section 14-17-16 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-17-16. Enforcement of judgment or order.

1. If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this chapter or under prior law, the obligation of the father may be enforced in the same or other proceedings by the mother, the child, the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or funeral, or by any other person, including a private agency, to the extent he has furnished or is furnishing these expenses.
2. The court ~~may~~ shall order support payments to be made ~~to the mother, the clerk of the court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court~~ subject to section 10 of this Act and section 14-09-08.1.
3. Willful failure to obey the judgment or order of the court constitutes contempt of court. All remedies for the enforcement of ~~judgments~~ child support orders apply.

SECTION 39. AMENDMENT. Section 14-19-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-19-03. Establishment of relationship of father and child. The relationship of father and child may be established by an acknowledgment of paternity, signed by both parents, given before a witness if:

1. The acknowledgment is made on a form, approved by the department, which provides:
 - a. Instructions for filing the acknowledgment with the department of health;
 - b. Places for entry of the parents' names, addresses, and social security numbers; parents' signatures; and witnesses' signatures; and
2. The witness, or any agent of a child support agency, verifies that the parents have been provided, before the acknowledgement of paternity is signed:
 - a. Written materials about paternity establishment, including the manner in which the relationship of father and child established under this chapter may be vacated; and
 - b. A written and oral description of the rights ~~and~~, responsibilities, and legal consequences of acknowledging paternity.

SECTION 40. AMENDMENT. Section 14-19-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-19-05. Filing of acknowledgment - Services provided. An acknowledgment of paternity made under this chapter must be filed with the department of health. Upon request of the department, the department of health shall furnish a certified copy of an acknowledgment of paternity to the department. The state department of health shall offer voluntary paternity establishment services.

SECTION 41. AMENDMENT. Section 14-19-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-19-06. Hospital-based program for acknowledgment of paternity - Effect of noncompliance.

1. During the period immediately preceding or following the birth of a child to an unmarried woman in a birthing hospital, the hospital, at a minimum, shall:
 - a. Provide to the mother and the alleged father, if he is present in the hospital:
 - (1) Written materials about paternity establishment;
 - (2) The forms necessary to voluntarily acknowledge paternity;
 - (3) A written and oral description of the rights ~~and~~, responsibilities, and legal consequences of acknowledging paternity; and
 - (4) The opportunity to speak, either by telephone or in person, with staff who are trained to clarify information and answer questions about paternity establishment;
 - b. Provide the mother and the alleged father, if he is present, the opportunity to voluntarily acknowledge paternity in the hospital;
 - c. Afford due process safeguards by informing, in writing, the mother and the alleged father, if he is present, of the manner in which a relationship of father and child established under this chapter may be vacated or rescinded; and
 - d. Forward completed acknowledgments to the state department of health.
2. The department may withhold medical assistance payments from any hospital that fails to comply with this section. At least thirty days in advance of any withholding, the department shall notify the hospital of the department's intention to withhold medical assistance payments from the hospital. The hospital may appeal the decision to withhold medical assistance benefits to the department.

SECTION 42. A new section to chapter 14-19 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

Oral notice. Any oral notice required under this chapter may be provided by a recording.

SECTION 43. AMENDMENT. Section 14-19-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-19-10. Vacation or rescission of acknowledgments - Time for commencing actions - Effect on presumptions under section 14-17-04 - Notice.

1. An acknowledgment of paternity made under this chapter may be vacated by the court or state department of health, or rescinded by the mother or father:

- a. By a notarized writing signed by either the father or the mother and filed with the state department of health within ~~ten~~ the earlier of:
 - (1) Sixty days after the execution of the acknowledgment of paternity; or
 - (2) The date of any proceeding relating to the child in which the signatory on the acknowledgment is a party;
 - b. By order of the district court upon a showing, by a party, that an acknowledgment of paternity made under this chapter was the result of material mistake of fact, fraud, or misrepresentation by another party, or any other reason justifying relief duress;
 - c. By order of the district court upon a showing that a voidable acknowledgment of paternity made concerning the birth of a child to a married woman should be made void; or
 - d. By the state department of health upon receipt of two or more acknowledgments of paternity concerning the same child.
2. A party shall commence a claim for relief under subdivision b of subsection 1 within one year after execution of the acknowledgment of paternity. This limitation may only be extended:
 - a. Due to the minority of a child in a case brought by the child with respect to whom the relationship of father and child was established; or
 - b. Upon a showing that continued enforcement of a judgment based on an acknowledgment of paternity made under this chapter would be manifestly unjust and unconscionable to all parties; that the party seeking relief was prevented by fraud or fraudulent concealment from discovering the claim for relief; and that the claim is commenced within one year after the claim was discovered or might, in the exercise of diligence, have been discovered.
 3. The vacation or rescission of an acknowledgment of paternity under this section does not affect any presumption of paternity provided under section 14-17-04.
 4. If the state department of health vacates an acknowledgment under this section, it promptly shall provide notice of its action to the mother, to each acknowledged father of the child, and, if the department has requested a certified copy of any vacated acknowledgment, to the department.
 5. The legal responsibilities of a parent, including the duty of supporting the child, may not be suspended during a district court proceeding under this section, except for good cause shown.

SECTION 44. AMENDMENT. Subsection 5 of section 23-02.1-13 of the North Dakota Century Code is amended and reenacted as follows:

5. If the child is not born during the marriage of the mother, or within three hundred days after any such marriage is terminated by death,

annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court, the name of the father may not be entered on the birth certificate unless:

- a. After the child's birth, the father and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:
 - (1) He has acknowledged his paternity of the child in writing filed with the state registrar;
 - (2) With his consent, he is named as the child's father on the child's birth certificate; or
 - (3) He is obligated to support the child under a written voluntary promise or by court order;
- b. While the child is under the age of majority, he received the child into his home and openly holds out the child as his natural child; ~~or~~
- c. ~~He acknowledges his paternity of the child in a writing filed with the state registrar which shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the state registrar. After the child's birth, the child's natural mother and the father voluntarily acknowledge the child's paternity in a writing signed by both and filed with the state registrar; or~~
- d. A court or other entity of competent jurisdiction has adjudicated paternity.

SECTION 45. A new subsection to section 23-02.1-19 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

Each death certificate must include the social security number of the decedent, if the information is available. A social security number included on a death certificate is exempt from section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

SECTION 46. A new section to chapter 28-21 of the North Dakota Century Code is created and enacted as follows:

Department of human services may issue executions for child support arrearages.

1. Notwithstanding the provisions of section 28-21-05, if a judgment has been docketed under section 14-08.1-05 in an amount greater than six times the monthly child support obligation and the judgment debtor is not current in a court-established plan to repay the unpaid child support judgment, the department of human services may issue an execution, against the property of the judgment debtor, to the sheriff of any county in which the property may be found.

2. A writ of execution issued by the department of human services must be issued as provided in section 28-21-06, except the writ may omit:
 - a. The seal of the court;
 - b. The subscription of the clerk of that court;
 - c. A statement of the courts and counties to which the judgment has been transcribed; and
 - d. If the writ is issued to a sheriff of a county other than the county in which the judgment is docketed, a date and time of docketing in that sheriff's county.
3. A writ issued by the department of human services is returnable to the department.

SECTION 47. A new chapter to title 34 of the North Dakota Century Code is created and enacted as follows:

Definitions. As used in this chapter:

1. "Department" means the department of human services.
2. "Employee" means an individual who would be determined to be an employee under chapter 24 of the Internal Revenue Code of 1986, as amended [26 U.S.C. 3401 et seq.], but does not include an employee of a federal or state agency performing intelligence or counterintelligence functions, if the head of the agency has determined that reporting under this chapter, with respect to that employee, could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.
3. "Employer" means an entity or individual who would be determined to be an employer under section 3401(d) of the Internal Revenue Code of 1986, as amended [26 U.S.C. 3401(d)], and includes any governmental entity and any labor organization.
4. "Labor organization" means an organization treated as a labor organization under section 2(5) of the National Labor Relations Act, as amended [29 U.S.C. 152(5)], and includes any entity, including a "hiring hall", which is used by the organization and an employer to carry out requirements, described in section 8(f)(3) of the National Labor Relations Act, as amended [29 U.S.C. 158(f)(3)], of an agreement between the organization and the employer.

State directory of new hires - Duties and responsibilities. There is, within the department, a state directory of new hires. The state directory of new hires shall, in conformance with section 453A of the Social Security Act [42 U.S.C. 653A]:

1. Receive reports made by employers;
2. Enter information into a data base maintained by the state directory of new hires;

3. Provide automated comparisons of employer report information and information maintained in the state registry of cases being enforced under the state plan approved under title IV-D of the Social Security Act [42 U.S.C. 651 et seq.] and identify cases matched; and
4. Transmit information received by the state directory of new hires to the national directory of new hires.

Employer reporting.

1. Except as provided in subsections 2 and 3, each employer shall furnish to the directory of new hires a report that contains the name, address, and social security number of each employee newly hired for work within this state, and the employer's name and address and the identifying number assigned under section 6109 of the Internal Revenue Code of 1986, as amended [26 U.S.C. 6109], to the employer.
2. An employer who has employees who are employed in two or more states, and who transmits reports magnetically or electronically, may designate one state in which the employer has employees and may transmit a report conforming to subsection 1 to that state. An employer who reports pursuant to this subsection must notify the secretary of the United States department of health and human services, in writing, of the state so designated.
3. Any department, agency, or instrumentality of the United States shall transmit a report, conforming to subsection 1, to the national directory of new hires established pursuant to section 453 of the Social Security Act [42 U.S.C. 653].
4. a. Except as provided in subdivision b, a report required under this section must be made no later than twenty days after the date the employer hires the employee.
b. If the employer transmits reports magnetically or electronically, a report required under this section may be made by two monthly transmissions, if necessary, not less than twelve nor more than sixteen days apart.

Reporting format. Each employer report required by this chapter must be made on a W-4 form, or, at the option of the employer, an equivalent form prescribed by the state directory of new hires. The report may be transmitted by first-class mail or by any magnetic or electronic means readable by the department, including facsimile transmission, electronic mail, modem transmission, or other means of electronic communication.

Civil money penalties.

1. Except as provided in subsection 3, an employer who, after warning provided under subsection 2, fails to file a timely, complete, and correct report required under this chapter is liable for a civil money penalty of twenty dollars for each failure to report a new hire.
2. The department may issue a written warning to an employer who fails to file a timely, complete, and correct report required under this chapter.

The warning must state that a failure to report may result in a civil money penalty.

3. An employer who, by agreement between the employer and employee, fails to file a timely, complete, and correct report required under this chapter or files a false or incomplete report, is liable for a civil money penalty of two hundred fifty dollars for each failure to report or each false or incomplete report.

Recovery of civil money penalties. A civil money penalty assessed under this chapter is payable fifteen days after service on the employer, by first-class mail, of notice of imposition of the civil money penalty. If an order for child support was issued by a court in this state, failure to pay a civil money penalty may be punished as a civil contempt by the court that issued an order for child support imposed upon a newly hired employee whose hiring was not reported timely, completely, and correctly. If an order for child support was issued by a court or administrative tribunal in another state, failure to pay a civil money penalty may be punished as a civil contempt by any court of this state with jurisdiction over the employer.

Disposition of civil money penalties. A civil money penalty collected under this chapter must be paid into the state treasury for deposit in the general fund after the costs of recovering the civil money penalty are deducted therefrom.

Confidentiality.

1. Information derived from employer reports received and maintained by the directory of new hires is confidential but must be made available for use by state agencies, in this state and other states, administering:
 - a. State plans under title IV-D of the Social Security Act [42 U.S.C. 651 et seq.];
 - b. Programs specified in section 1137(b) of the Social Security Act [42 U.S.C. 1320b-7(b)];
 - c. Employment security programs; and
 - d. Workers' compensation programs.
2. Information acquired under subsection 1 remains confidential subject to the confidentiality requirements of the plans and programs identified in subsection 1.

SECTION 48. A new chapter to title 35 of the North Dakota Century Code is created and enacted as follows:

Definitions. For purposes of this chapter:

1. "Account" has the meaning provided in section 50-09-01.
2. "Child support" has the meaning provided in section 14-09-09.10.
3. "Financial institution" has the meaning provided in section 50-09-01.
4. "Obligee" has the meaning provided in section 14-09-09.10.

5. "Obligor" has the meaning provided in section 14-09-09.10.
6. "Past due support" has the meaning provided in section 14-09-09.10.
7. "Public authority" has the meaning provided in section 14-09-09.10.
8. "Vehicle" has the meaning provided in section 39-01-01.
9. "Vessel" has the meaning provided in section 20.1-01-02.

Lien for past due child support. When a past due child support obligation is at least six times the monthly child support obligation and the obligor is not current in a court-established plan to repay the past due support, the public authority may establish a lien on personal property as provided in this chapter.

Vehicle lien.

1. In the case of a vehicle, the public authority may establish a lien by filing a notice of lien with the director of the department of transportation. The notice must be in a form prescribed by the director and contain a description of the vehicle, the name and last known address of the obligor, and any other information required by the director. The notice of lien must state that the child support obligation is past due and that a copy of the notice of lien has been served on the obligor by first-class mail at the obligor's last known address.
2. Upon filing of the notice of lien in accordance with this section, the director shall demand in writing the surrender of the certificate of title from the obligor or a superior lienholder for the purpose of recording the lien on the certificate of title. Upon receipt of the certificate of title, the director shall record the fact of the lien and the identity of the lienholder on the certificate of title and deliver the certificate of title to the vehicle's owner or, if a superior lienholder had possession of the certificate of title, to that superior lienholder. If the obligor or superior lienholder fails to surrender the certificate of title within fifteen days after the written demand by the director, the director shall notify the public authority seeking the lien.
3. Upon receipt of notice from the director that the obligor or superior lienholder has not responded to the demand for surrender of a title certificate, the public authority may obtain an order from a court of competent jurisdiction requiring the certificate of title to be delivered to the court so that a lien may be properly recorded.
4. No fee may be charged for services provided under this section.
5. The director may determine a certificate of title to have been fraudulently procured if endorsed by a previous owner who, at the time the endorsement was made:
 - a. Was an obligor who owed past due child support; and
 - b. Had been served with a copy of a notice of lien filed under this section with respect to the vehicle described on that certificate of title.

6. A lien under this section is perfected when the lien is recorded on the certificate of title.

Vessel lien.

1. In the case of a vessel, the public authority may establish a lien by filing a notice of lien with the secretary of state if the value of the vessel is estimated to be at least twice the cost of establishing the lien. The notice must contain a description of the make, model designation, and serial number of the vessel, including its identification or registration number, if any, and the name, social security number, and last known address of the obligor. The notice of lien must state that the child support obligation is past due and that a copy of the notice of lien has been served on the obligor by first-class mail at the obligor's last known address.
2. Upon filing of the notice of lien in accordance with this section, the notice of lien must be indexed by the secretary of state in the central notice system and may be enforced and foreclosed in the same manner as a security agreement under the provisions of title 41.
3. The secretary of state shall remove and destroy the lien notification statement in the same manner as provided for other liens in section 11-18-14 for the register of deeds. The secretary of state shall charge the same filing and information retrieval fees and credit the amounts in the same manner as financing statements filed under chapter 41-09.
4. A lien under this section is perfected when notice of the lien is filed with the secretary of state.
5. The public authority may file an amendment to correct the social security number of the obligor, to correct the spelling of the obligor's name, or to correct or change the address of the obligor.

Account lien.

1. In the case of an account maintained in a financial institution, the public authority may establish a lien on the account by serving a notice of lien upon the financial institution in the manner provided for service of a summons in a civil action. The notice must be in a form prescribed by the public authority and contain the name, social security number, or other taxpayer identification number and last known address of the obligor, the amount of past due support for which a lien is claimed, and any other information required by the public authority. The notice of lien must state that the child support obligation is past due and that a copy of the notice of lien has been served on the obligor by first-class mail at the obligor's last known address.
2. Upon service of the notice of lien on a financial institution in accordance with this section, the lien attaches to accounts of the obligor maintained in the financial institution, except to the extent necessary to satisfy any right of set off which exists in connection with an account, payment orders that were made by the obligor before the financial institution was served with notice of lien, or other obligations of the obligor based upon written agreements or instruments made or issued by the obligor before the financial institution was served with notice of lien.

3. A lien under this section is perfected when the financial institution is served with notice of the lien.

Lien on other personal property.

1. In the case of personal property that does not consist of a vehicle, a vessel, or an account maintained in a financial institution, the public authority may establish a lien on such personal property by filing a notice of lien with the office of the register of deeds in the county in which the personal property may be found or with the secretary of state. The notice must particularly describe the property to be subjected to the lien and the name and last known address of the obligor. The notice of lien must state that the child support obligation is past due and that a copy of the notice of lien has been served on the obligor by first-class mail at the obligor's last known address.
2. The information filed with a register of deeds or with the secretary of state under this section must be included in the computerized central notice system maintained by the secretary of state under section 41-09-46 and must be accessible to the public on the same terms and conditions that apply to access other statutory lien information maintained in the computerized central notice system.
3. Upon filing of the notice of lien in accordance with this section, the lien attaches to and is perfected against all personal property described in the notice.

Priority of liens. A lien perfected under this chapter may not be subordinate to any other lien except a lien that was perfected before the child support lien was perfected. The public authority may, upon request of the obligor, subordinate the child support lien.

Satisfaction of lien. Upon payment of all past due child support obligations, the public authority shall provide, within a reasonable time, an appropriate satisfaction or release of a lien arising under this chapter.

Immunity from liability. A person in possession of, or obligated with respect to, property, who, upon demand of the public authority, surrenders the property or discharges the obligation to the public authority is immune from any liability to the obligor or other person arising from the surrender or payment. The court shall award reasonable attorney's fees and costs against any person who commences an action that is subsequently dismissed by reason of the immunity granted by this section.

Action to enforce lien. In any case in which there has been a refusal or neglect to pay child support, the public authority, in addition to any other relief, may file an action in any court of competent jurisdiction to enforce a lien under this chapter. The filing of an action does not preclude the public authority from pursuit of any other means of enforcement available under state or federal law.

Persons aggrieved. A person aggrieved by an action taken by the public authority to enforce a lien under this chapter may seek review of the public authority's actions in the court that issued the child support order claimed to be past due.

Full faith and credit. A lien arising in another state, under a law of that state implementing the provisions of 42 U.S.C. 666(a)(4)(A), is entitled to full faith and credit when the party seeking to enforce that lien records or serves the lien documents in the manner provided under this code. No judicial notice or hearing is required prior to recording or service of the lien documents.

SECTION 49. A new chapter to title 43 of the North Dakota Century Code is created and enacted as follows:

Definition. For purposes of this chapter, "occupational or professional certificate, permit, or license" means a certificate, permit, or license issued by or on behalf of the state by any of its licensing authorities or occupational or professional boards, which an individual is required to obtain before engaging in the individual's occupation or profession.

Social security number required for professional or occupational license. No issuer of an occupational or professional certificate, permit, or license may issue such a certificate, permit, or license, or renewal thereof, to any individual who has not first provided the individual's social security number.

Inclusion of social security number in automated data base. An issuer of an occupational or professional certificate, permit, or license, that maintains an automated data base concerning individuals who have applied for or been issued a certificate, permit, or license, after the effective date of this section, must include the individual's social security number as an identifier in that data base.

Social security number not public record. A social security number provided under this chapter is exempt from section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

SECTION 50. AMENDMENT. Section 50-06-01.4 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-06-01.4. Structure of the department. The department includes the state hospital; the regional human service centers; a vocational rehabilitation unit; and other units or offices and administrative and fiscal support services as the executive director determines necessary. The department must be structured to promote efficient and effective operations and, consistent with fulfilling its prescribed statutory duties, shall act as the official agency of the state in the discharge of the following functions not otherwise by law made the responsibility of another state agency:

1. Administration of programs for children and families, including adoption services and the licensure of child-placing agencies, foster care services and the licensure of foster care arrangements, child protection services, children's trust fund, state youth authority, licensure of day care homes and facilities, services to unmarried parents, refugee services, in-home community-based services, and administration of the interstate compacts on the placement of children and juveniles.
2. Administration of programs for persons with developmental disabilities, including licensure of facilities and services, and the design and implementation of a community-based service system for persons in need of habilitation.
3. Administration of aging service programs, including nutrition, transportation, advocacy, social, ombudsman, recreation, and related

services funded under the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.], home and community-based services, licensure of adult family care homes, committee on aging, and the fund matching program for city or county tax levies for senior citizen activities and services.

4. Administration of mental health programs, including planning and implementing preventive, consultative, diagnostic, treatment, and rehabilitative services for persons with mental or emotional disorders and psychiatric conditions.
5. Administration of programs for crippled children, including the provision of services and assistance to crippled children and their families, and the development and operation of clinics for the identification, screening, referral, and treatment of crippled children.
6. Administration of alcohol and drug abuse programs, including establishing quality assurance standards for the licensure of programs, services, and facilities, planning and coordinating a system of prevention, intervention, and treatment services, providing policy leadership in cooperation with other public and private agencies, and disseminating information to local service providers and the general public.
7. Administration of economic assistance programs, including ~~aid to families with dependent children~~ temporary assistance for needy families, food stamps, fuel assistance, child support enforcement, refugee assistance, work experience, work incentive, and quality control.
8. Administration of medical service programs, including medical assistance for needy persons, early and periodic screening, diagnosis and treatment, ~~the licensure of basic care facilities,~~ utilization control, and claims processing.

The executive director shall consult with and maintain a close working relationship with the state department of health; with the department of corrections and rehabilitation and the superintendents of the school for the deaf and the school for the blind to develop programs for developmentally disabled persons; and with the superintendent of public instruction to maximize the use of resource persons in regional human service centers in the provision of special education services. The executive director shall also maintain a close liaison with county social service agencies.

³ **SECTION 51. AMENDMENT.** Section 50-06-01.8 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-06-01.8. Department to seek waiver to establish ~~welfare reform demonstration project~~ training, education, employment, and management program - Waiver may be terminated - Program characteristics - Cooperation by governmental bodies - Interim rulemaking.

³ Section 50-06-01.8 was also amended by section 37 of Senate Bill No. 2046, chapter 51, and section 52 of House Bill No. 1226, chapter 404.

1. The department of human services shall seek, from appropriate federal officials, authorization to establish a demonstration project to combine the benefits provided under the state's aid to families with dependent children, temporary assistance for needy families, fuel assistance, and food stamp programs, pursuant to title IV-A of the Social Security Act, as enacted before August 22, 1996, [42 U.S.C. 601 et seq.], title IV-A of the Social Security Act, as enacted August 22, 1996, [42 U.S.C. 601 et seq.], the low-income home energy assistance program [42 U.S.C. 8621-8629], and the Food Stamp Act [7 U.S.C. 2011-2027].
2. Subject to the approval of the legislative council, the department of human services may terminate any waiver secured under subsection 1, or the demonstration project described in subsection 1, if necessary or desirable for the statewide implementation of the training, education, employment, and management program, or otherwise.
3. The ~~demonstration project~~ training, education, employment, and management program established under this section must provide for uniform and consistent treatment of income and assets in determining eligibility; provide for the creation of a uniform method of budgeting and computing benefits, a consistent certification period for the receipt of benefits, and uniform reporting requirements; provide for necessary child care to allow a participant to meet educational and employment goals; and provide for universal employment and training to assist individuals in becoming self-sufficient. The ~~project~~ training, education, employment, and management program may be administered notwithstanding the requirements of ~~subsections 4 and 5 of section 50-01-09~~ section 50-01.2-03, section 50-03-07, subsections 17 and 19 of section 50-06-05.1, chapter 50-09, and section 50-11.1-11.1, relating to the administration of the ~~aid to families with dependent children temporary assistance for needy families~~, fuel assistance, and food stamp programs, except that a county shall reimburse the state for expenditures for the ~~aid to families with dependent children temporary assistance for needy families~~ program in that county as required by section 50-09-21. The ~~demonstration project~~ training, education, employment, and management program may require any participant to cooperate with child support enforcement efforts.
4. The department of economic development and finance, job service North Dakota, county social service boards, and any other state agency determined appropriate, shall cooperate with the department to ensure the success of the ~~project~~ program. Local government agencies within the demonstration project counties are encouraged to cooperate with the department.
5. Rules adopted to implement the ~~demonstration project~~ training, education, employment, and management program may be adopted as interim final rules without a finding that emergency rulemaking is necessary, and the interim final rules may take effect on a date no earlier than the date of filing with the legislative council of the notice of proposed adoption of a rule required by subsection 4 of section 28-32-02.

⁴ **SECTION 52. AMENDMENT.** Section 50-06-01.8 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-06-01.8. Department to seek waiver to establish ~~welfare reform demonstration project~~ training, education, employment, and management program - Waiver may be terminated - Program characteristics - Cooperation with governmental bodies - Interim rulemaking.

1. The department of human services shall seek, from appropriate federal officials, authorization to establish a demonstration project to combine the benefits provided under the state's aid to families with dependent children, temporary assistance for needy families, fuel assistance, and food stamp programs, pursuant to title IV-A of the Social Security Act, as enacted before August 22, 1996, [42 U.S.C. 601 et seq.], title IV-A of the Social Security Act, as enacted August 22, 1996, [42 U.S.C. 601 et seq.], the low-income home energy assistance program [42 U.S.C. 8621-8629], and the Food Stamp Act [7 U.S.C. 2011-2027].
2. Subject to the approval of the legislative council, the department of human services may terminate any waiver secured under subsection 1, or the demonstration project described in subsection 1, if necessary or desirable for the statewide implementation of the training, education, employment, and management program, or otherwise.
3. The ~~demonstration project~~ training, education, employment, and management program established under this section must provide for uniform and consistent treatment of income and assets in determining eligibility; provide for the creation of a uniform method of budgeting and computing benefits, a consistent certification period for the receipt of benefits, and uniform reporting requirements; provide for necessary child care to allow a participant to meet educational and employment goals; and provide for universal employment and training to assist individuals in becoming self-sufficient. The ~~project~~ training, education, employment, and management program may be administered notwithstanding the requirements of ~~subsections 4 and 5 of section 50-01-09~~ section 50-01.2-03, section 50-03-07, subsections 17 and 19 of section 50-06-05.1, chapter 50-09, and section 50-11.1-11.1, relating to the administration of the ~~aid to families with dependent children temporary assistance for needy families~~, fuel assistance, and food stamp programs; ~~except that a county shall reimburse the state for expenditures for the aid to families with dependent children program in that county as required by section 50-09-24.~~ The ~~demonstration project~~ training, education, employment, and management program may require any participant to cooperate with child support enforcement efforts.
4. The department of economic development and finance, job service North Dakota, county social service boards, and any other state agency determined appropriate, shall cooperate with the department to ensure the success of the ~~project~~ program. Local government agencies ~~within~~

⁴ Section 50-06-01.8 was also amended by section 37 of Senate Bill No. 2046, chapter 51, and section 51 of House Bill No. 1226, chapter 404.

~~the demonstration project counties~~ are encouraged to cooperate with the department.

5. Rules adopted to implement the demonstration project may be adopted as interim final rules without a finding that emergency rulemaking is necessary, and the interim final rules may take effect on a date no earlier than the date of filing with the legislative council of the notice of proposed adoption of a rule required by subsection 4 of section 28-32-02.

SECTION 53. AMENDMENT. Section 50-09-01 of the North Dakota Century Code is amended and reenacted as follows:

50-09-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Account" means a demand deposit account, checking or negotiable withdrawal order account, share account, share draft account, savings account, time deposit account, securities account, money market mutual fund account, or any other account or arrangement that reflects an owner's share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, to the extent the owner is permitted to redeem the share or interest by an order for payment to a third party.
2. "Assistance" means money payments with respect to, or goods and services provided for dependent children, including payments for the care of unmarried mothers or fathers and their infants.
3. "Child support" has the meaning provided in section 14-09-09.10.
4. "Child support agency" has the meaning provided in section 14-09-09.10.
2. 5. "County agency" means the county social service board in each of the counties of the state.
3. 6. "Dependent child" means any needy child who is described in a state plan for aid and services to needy families submitted pursuant to title IV-A of the Social Security Act [42 U.S.C. § 601, et seq.]. ~~The state agency is authorized to submit a state plan in a form which is consistent with and which meets the requirements for such plans which are or may be imposed by that Act.~~
7. "Financial institution" means:
 - a. A depository institution, as defined in section 3(c) of the Federal Deposit Insurance Act [12 U.S.C. § 1813(c)];
 - b. An institution-affiliated party, as defined in section 3(u) of the Federal Deposit Insurance Act [12 U.S.C. § 1813(u)];
 - c. Any federal credit union or state credit union, as defined in section 101 of the Federal Credit Union Act [12 U.S.C. § 1752], including an institution-affiliated party of such a credit union, as defined in section 206(r) of the Federal Credit Union Act [12 U.S.C. § 1786(r)]; and

- d. Any benefit association, insurance company, safe deposit company, securities intermediary, money market mutual fund, or similar entity authorized to do business in the state.
8. "Obligor" has the meaning provided in section 14-09-09.10.
9. "Past due support" has the meaning provided in section 14-09-09.10.
10. "Secretary" means the secretary of the United States department of health and human services.
11. "Securities account" has the meaning provided in section 41-08-41.
12. "Securities intermediary" has the meaning provided in section 41-08-02, but does not include a clearing corporation.
- 4- 13. "State agency" means the North Dakota department of human services.
14. "Title IV-A" means title IV-A of the Social Security Act, as adopted by title I of Pub. L. 104-193 [110 Stat. 2110 et seq.; 42 U.S.C. § 601 et seq.].
15. "Title IV-D" means title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq.].

SECTION 54. AMENDMENT. Section 50-09-02 of the North Dakota Century Code is amended and reenacted as follows:

50-09-02. Duties of the state agency. The state agency shall:

1. Take such action and ~~make such~~ adopt rules and ~~regulations~~ as may become necessary to entitle the state to receive ~~aid~~ funds from the federal government ~~for aid to dependent children in North Dakota~~ under title IV-A.
2. Supervise the administration of ~~assistance to dependent children~~ temporary assistance for needy families throughout the state of North Dakota.
3. Take such action, give such directions, and ~~promulgate such~~ adopt rules and ~~regulations~~ as may be necessary or desirable to carry out the provisions of this chapter, including the adoption and application of suitable standards and procedure to ensure ~~uniform and equitable~~ appropriate treatment of all applicants for ~~aid to dependent children~~ temporary assistance for needy families.
4. Cooperate with the federal government in matters of mutual concern pertaining to ~~aid to dependent children~~ temporary assistance for needy families, including the adoption of such methods of ~~administration~~ administration as are found by the ~~federal government~~ state agency to be ~~necessary~~ appropriate for the efficient operation of the plan for such assistance.
5. Provide such qualified employees and representatives as may be necessary.

6. Prescribe the form of and print and supply to the county agencies blanks for applications, reports, and such other forms as it may deem necessary and advisable.
7. Have authority to establish and maintain personnel standards on a merit basis for personnel employed by the state and the county public assistance agencies not covered by a statewide merit system.
8. Make such reports in such form and containing such information as the federal government from time to time may require.
9. ~~Comply with such provisions, rules, and regulations as the federal government, from time to time, may find it necessary to make to assure the correctness and verification of the reports to be made~~ Make any determinations respecting title IV-A not expressly reserved to the federal government under federal law.
10. ~~Publish a biennial report and such interim reports as may be deemed necessary.~~ Determine if the terms of any waiver of federal requirements, pertaining to the aid to families with dependent children program, submitted to the federal government before August 22, 1996, are consistent with the requirements of title IV-A.
11. Determine the expenditures that constitute qualified state expenditures for purposes of this chapter.
12. Determine the costs that constitute administrative costs for purposes of this chapter.
13. Determine in any case if assistance provided will be funded through qualified state expenditures, funds made available from the federal government under title IV-A, or a combination thereof.
14. Assist recipients of temporary assistance for needy families, in a form and manner determined appropriate by the state agency, but which need not be uniform among families or among counties.
44. ~~15.~~ Administer all funds appropriated or made available to it for the purpose of carrying out the provisions of this chapter.
42. ~~16.~~ Act as the official agency of the state in the administration of the child support enforcement program in conformity with title IV-D of the Social Security Act, as amended, and to direct and supervise county administration of that program.
17. Take actions and adopt rules necessary to entitle the state to receive funds from the federal government under the child care and development block grant [42 U.S.C. 9858, et seq.], as amended.
18. Have authority to establish a program for families that include both a minor child and an incapacitated parent of that minor child, using no federal funds derived from temporary assistance for needy families block grant funds, which otherwise functions in substantially the form and manner of the temporary assistance for needy families program.

SECTION 55. AMENDMENT. Section 50-09-02.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-09-02.1. State agency to submit plans - Administer ~~Family Support Act~~ programs under title IV-A and title IV-D - Establish data system - Provide capacity for electronic funds transfer.

1. The state agency may submit state plans in forms that meet the requirements for such plans which are, or may be, imposed under ~~the Family Support Act of 1988 [Pub. L. 100-485; 102 Stat. 2343]~~ title IV-A or title IV-D. The state agency may take actions reasonably necessary to conform the administration of programs under its supervision and direction to the requirements of ~~the Family Support Act of 1988~~ title IV-A or title IV-D and the state plans submitted thereunder, including the issuance of policy manuals, forms, and program directives. The state agency may seek appropriate waivers of the requirements of federal statutes or regulations as authorized by federal law.
2. The state agency shall establish a statewide automated data processing system designed to conform to requirements imposed by or under ~~the Family Support Act of 1988~~ title IV-D. The state agency must make that system available for the use of clerks of court in carrying out their duties under section 14-09-08.1. The official records of the state regarding all child support amounts owed, collected, and distributed must be maintained in that system.
3. The statewide automated data processing system must provide capability for electronic funds transfer for the purpose of income withholding and interstate collections.

SECTION 56. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

State case registry.

1. The statewide automated data processing system established under section 50-09-02.1 must include a registry that contains records with respect to:
 - a. Each child support case in which services are being provided by the state agency or a child support agency under title IV-D; and
 - b. Each child support order established or modified in this state on or after October 1, 1998.
2. The case records must use standardized data elements for both parents and contain other information the secretary requires.
3. Each case record concerning a case with respect to which services are being provided by the state agency or a child support agency under title IV-D must:
 - a. Include payment records consistent with the requirements of title IV-D, which include:

- (1) The amount of current monthly or other periodic support owed under the order, and other amounts, including arrearages, interest, late payment penalties, fees, and amounts determined under section 24 of this Act, due or past due under the order;
 - (2) Any amount described in paragraph 1 that has been collected;
 - (3) The distribution of collected amounts;
 - (4) The birthdate of any child for whom an order requires the provision of support; and
 - (5) The amount necessary to satisfy any lien imposed under section 48 of this Act or established as a judgment lien under section 14-08.1-05.
- b. Be established, maintained, updated, and monitored on the basis of:
- (1) Information on administrative actions and administrative and judicial proceedings and orders relating to paternity and child support;
 - (2) Information obtained from comparison with federal, state, and local sources of information;
 - (3) Information on child support collections and distributions; and
 - (4) Any other relevant information.

SECTION 57. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Required uses of statewide automated data processing system. The statewide automated data processing system established under section 50-09-02.1 must, in accordance with requirements of title IV-D, and regulations, formats, and operating requirements of the secretary adopted thereunder:

1. Effective October 1, 1998, provide comparisons respecting:
 - a. Federal and state case registry information;
 - b. Federal and state parent locator information;
 - c. Information secured under this chapter, chapter 50-24.1, similar laws administered in other states, and such other programs designated by the secretary as necessary to perform state agency functions under title IV-D, and under the respective programs; and
 - d. Information gathered by other agencies of this state, agencies of other states, and interstate networks as necessary and appropriate to carry out state agency duties respecting title IV-D or to assist other states to carry out similar duties;

2. Effective October 1, 1998, be used by the state disbursement unit in the performance of functions including:
 - a. Timely transmission of orders and notices to income payors for the withholding of income using uniform formats prescribed by the secretary;
 - b. Ongoing monitoring to promptly identify failures to make timely payment of support;
 - c. Automatic use of enforcement procedures if payments are not timely made; and
 - d. Be used, to the maximum extent feasible, to receive and disburse child support payments through electronic fund transfers; and
3. Be used, to the maximum extent feasible, to implement the expedited administrative procedures required by title IV-D.

SECTION 58. AMENDMENT. Section 50-09-03 of the North Dakota Century Code is amended and reenacted as follows:

50-09-03. Duties of county agency. In the administration of ~~aid to dependent children~~ assistance under this chapter, a county agency shall:

1. Administer the ~~provisions of this chapter~~ temporary assistance for needy families program in its county, subject to the rules ~~and regulations prescribed by~~ of the state agency ~~pursuant to the provisions of this chapter.~~
2. Report to the state agency at such times and in such manner and form as the state agency, from time to time, may direct.
3. Submit annually to the board of county commissioners of each county a budget containing an estimate and supporting data, setting forth the amount of money needed to carry out the provisions of this chapter.
4. Cooperate with juvenile courts and licensed children's agencies.
5. Administer the child support enforcement program under the direction and supervision of the state agency in conformity with title IV-D ~~of the Social Security Act, as amended.~~ In administering the program, the county agency shall have the authority to contract with any public or private agency or person to discharge their child support enforcement duties.

SECTION 59. AMENDMENT. Section 50-09-06 of the North Dakota Century Code is amended and reenacted as follows:

50-09-06. Application for assistance - Assignment of support rights. Application for ~~aid to a dependent child~~ assistance under this chapter must be made to the county agency in the manner and form prescribed by the state agency. The application must contain such information as the state agency may require, and the action of the state agency in approving and granting assistance or in disapproving and denying assistance is final and binding on the county agency. An application for assistance under this chapter is deemed to create and effect an assignment of all

rights of support, which exist or may come to exist for the benefit of the child, to the state agency and county agency. The assignment:

1. Is effective as to both current and accrued child support obligations.
2. Takes effect upon a determination of eligibility for assistance under this chapter.
3. Terminates when an applicant ceases to receive assistance under this chapter, except with respect to the amount of any unpaid support obligation accrued under the assignment.

SECTION 60. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Power of state agency, child support agency, and employees and agents.

1. In implementing programs under title IV-D, the state agency, the child support agencies, and the officials, employees, and agents of such agencies may:
 - a. Conduct examinations;
 - b. Require by subpoena the attendance of witnesses and the production of books, records, and papers;
 - c. Compensate witnesses and individuals producing books, records, including records maintained in automated data bases, and papers in amounts determined by the state agency, not to exceed actual reasonable costs incurred;
 - d. Impose a fiscal sanction of no more than twenty-five dollars for each day against a person who fails to attend as a witness or produce books, records, or papers;
 - e. Require genetic testing of appropriate individuals when necessary in disputed paternity cases, to determine the relationship of parent and child, and:
 - (1) Pay the costs of such testing, subject to recoupment from the alleged father if paternity is established; and
 - (2) Obtain additional testing in any case if an initial test result is contested, upon request and advance payment by the contestant;
 - f. Make application to the district court to compel participation in genetic testing, the attendance of witnesses, the production of books, records, and papers, and the payment of fiscal sanctions imposed under this section;
 - g. Notwithstanding any provision of law making the records confidential, obtain access, including automated access in the case of records maintained in automated data bases, to:

- (1) Records of other state and local government agencies, including:
 - (a) Vital statistics, including records of marriage, birth, and divorce;
 - (b) Local tax and revenue records, including information on residence address, employer, income, and assets;
 - (c) Records concerning real and titled personal property;
 - (d) Records of occupational and professional licenses, and records concerning the ownership and control of corporations, partnerships, and other business entities;
 - (e) Employment security records;
 - (f) Workers compensation bureau records identifying the last-known address of a person who owes or who is owed support, the wage-loss benefits, permanent partial impairment benefits, death benefits, or additional benefits that person has received or is entitled to receive from the bureau, and whether and where that person is currently employed;
 - (g) Records of all agencies administering public assistance programs;
 - (h) Records of the department of transportation;
 - (i) Corrections records;
 - (j) Law enforcement records; and
 - (k) Subject to an agreement with the state tax commissioner, state tax and revenue records, including information on residence address, employer, income, and assets; and
 - (2) Certain records held by private entities with respect to individuals who owe or are owed child support, or against or with respect to whom a child support obligation is sought, consisting of:
 - (a) The names and addresses of such individuals and the names and addresses of the employers of such individuals, as appearing in customer records of public utilities and cable television companies; and
 - (b) Information on assets and liabilities on those individuals held by financial institutions.
- h. Enter into agreements with financial institutions doing business in the state:

- (1) To develop and operate, in coordination with those financial institutions, a data match system, using automated data exchanges to the maximum extent feasible, in which each such financial institution is required to provide in each calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at such financial institution and who owes past due support, as identified by the state agency by name and social security number or other taxpayer number; and
 - (2) Under which such financial institution, in response to a notice of lien or an execution, will encumber or surrender, as the case may be, assets held by such institution on behalf of any noncustodial parent who is subject to a lien for unpaid child support.
 - i. For purposes of locating parents or alleged parents of children receiving services under title IV-D, provide all federal and state agencies conducting activities under title IV-D with access to:
 - (1) Records of the department of transportation; and
 - (2) Law enforcement records.
 - j. Notwithstanding any provision of law making the records confidential;
 - (1) Provide access to information identifying the amount of payment necessary to obtain the release of a lien taken by the state agency in any property to secure the payment of child support; and
 - (2) Upon payment of a sufficient amount, satisfy and release that lien.
2. All information received under this section, if confidential under some other provision of law, is subject to the penalties under section 50-06-15 and is confidential, except that the information may be used in the administration of any program administered by or under the supervision and direction of the department and as specifically authorized by the rules of the department. Any information received under this section, if not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota in the possession of the person providing the information, is exempt from section 44-04-18 and section 6 of article XI of the Constitution of North Dakota. Any person acting under the authority of the state agency who pursuant to this subsection obtains information from the office of the state tax commissioner, the confidentiality of which is protected by law, may not divulge such information except to the extent necessary for the administration of the child support enforcement program or when otherwise directed by judicial order or otherwise provided by law.
 3. a. As provided in title IV-D, a person is immune from suit or any liability under any federal or state law:

- (1) For any disclosure of information, in any form, made under this section, to the state agency, a county agency, or an official, employee, or agent of either;
 - (2) For encumbering or surrendering any assets held by a financial institution in response to a notice of lien or an execution issued by the state agency as provided in sections 45 and 47 of this Act; or
 - (3) For any other action taken in good faith to comply with the requirements of this section.
- b. The court shall award reasonable attorney's fees and costs against any person who commences an action that is subsequently dismissed by reason of the immunity granted by this section.
4. The officers and employees designated by the county agencies or the state agency may administer oaths and affirmations.
 5. All employing or contracting entities within this state, including for-profit, nonprofit, and governmental employers, shall provide information on the employment, compensation, and benefits of any individual employed by such entity as an employer or contractor within ten days of a request made under subsection 1 or made by the agency of any other state charged with administration of programs under title IV-D. An entity that receives a request for which a response is required by this section is subject to a fiscal sanction of twenty-five dollars for each day, beginning on the eleventh day after the request is made and not complied with.

SECTION 61. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Administrative enforcement in interstate cases. In acting as the official agency of the state in administering the child support program under title IV-D, the state agency, directly or through agents and county agencies:

1. Shall respond within five business days of receipt of a request made by another state to enforce a child support order;
2. May transmit to other states requests for assistance in cases involving enforcement of child support orders which include information provided and intended to enable the receiving state to compare information about the case to information in the data bases of the receiving state, and which constitute a certification:
 - a. Of the amount of arrearages, if any, under the child support order; and
 - b. That procedural due process requirements applicable to the case have been complied with;
3. In cases in which the state agency receives requests made by another state to enforce a child support order, shall not consider that matter a child support case transferred to this state; and

4. Shall maintain records of:
 - a. The number of requests for assistance made by other states;
 - b. The number of cases in which this state collected support in response to requests made by other states; and
 - c. The amount of support collected.

SECTION 62. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Reporting arrearages to credit bureaus.

1. In acting as the official agency of the state in administering the child support program under title IV-D, the state agency, directly or through agents and county agencies, subject to subsection 2, may report periodically to consumer reporting agencies the name of any obligor who owes past due support, and the amount of past due support owed by the obligor.
2. The state agency may report under subsection 1 only after such an obligor has been provided notice and a reasonable opportunity to contest the accuracy of the statement of the name and amount of overdue support owed by the obligor.
3. For purposes of this section, "consumer reporting agency" means an agency that has furnished evidence, satisfactory to the department, that the agency is a consumer reporting agency as defined in section 603(f) of the Fair Credit Reporting Act [15 U.S.C. 1681a(f)].

SECTION 63. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Securing assets to satisfy past due child support. In acting as the official agency of the state in administering the child support program under title IV-D, in cases in which there is past due child support, the state agency may secure assets to satisfy the past due amount by issuing writs of execution under chapter 28-21. Those writs of execution may be used to secure or seize property including:

1. Periodic or lump sum payments from:
 - a. An agency administering unemployment compensation benefits, workers compensation benefits, or other benefits; and
 - b. Judgments, settlements, and gaming proceeds otherwise belonging to the obligor, or payable upon the obligor's demand;
2. Assets of the obligor held in financial institutions; and
3. Public and private retirement funds.

SECTION 64. AMENDMENT. Section 50-09-09 of the North Dakota Century Code is amended and reenacted as follows:

50-09-09. Award of assistance. Upon completion of the investigation of an applicant for assistance under this chapter, the county agency shall determine, in accordance with the rules of the state agency:

1. ~~That~~ If the applicant is eligible for may be provided assistance under the provisions of this chapter;
2. The amount and type of any assistance the applicant ~~shall~~ may receive; and
3. The date upon which such assistance ~~shall~~ may begin.

In all cases, a statement of the findings of the county agency forthwith must be transmitted to the state agency.

SECTION 65. AMENDMENT. Section 50-09-14 of the North Dakota Century Code is amended and reenacted as follows:

50-09-14. Appeal and hearing - Review of child support actions.

1. An applicant for or recipient of aid to dependent children temporary assistance for needy families under the provisions of this chapter, aggrieved because of a county agency's decision or delay in making a decision, may appeal to the state agency in the manner prescribed by the state agency and must be afforded a reasonable notice and opportunity for a fair hearing by the state agency. The state agency, on its own motion, may review individual cases and make determinations which are binding upon the county agency. An applicant or recipient aggrieved by any such determination, upon request, must be afforded reasonable notice and opportunity for a fair hearing by the state agency. All decisions of the state agency made on an appeal are final and are binding upon and must be complied with by the county agency.
2. Any person aggrieved by an action taken by the state agency or a child support agency under section 9 of this Act or this chapter to establish or enforce a child support order may seek review of the action of the state agency or child support agency in the court of this state that issued or considered the child support order. If an order for child support was issued by a court or administrative tribunal in another state, any person aggrieved by an action taken by the state agency or a child support agency under section 9 of this Act or this chapter to enforce that order may seek review of the action of the state agency or child support agency in any court of this state which has jurisdiction to enforce that order, or if no court of this state has jurisdiction to enforce that order, in any court of this state with jurisdiction over the necessary parties. Any review sought under this subsection must be commenced within thirty days after the date of action for which review is sought. A person who has a right of review under this subsection may not seek review of the actions of the state agency or child support agency in a proceeding under chapter 28-32.

⁵ **SECTION 66. AMENDMENT.** Section 50-09-20 of the North Dakota Century Code is amended and reenacted as follows:

50-09-20. Appropriation of county funds.

1. For the purpose of carrying out the provisions of this chapter, the board of county commissioners of each county annually shall appropriate and make available an amount sufficient to pay:
 4. a. Local expenses of administration of temporary assistance for needy families and the county's share of assistance payments as specified in section 50-09-21;
 2. b. Local expenses of administration of the child support enforcement program; and
 3. c. Local expenses of administration and the county's share of program costs of the early childhood services program, job opportunity and basic skills training program, transportation program, and case management program child care assistance programs and employment and training programs, as specified in section 50-09-21.
2. For purposes of this section, "local expenses of administration" include costs for personnel, space, equipment, computer software, materials, travel, utilities, and related costs, and the indirect costs properly allocated to those costs. The term does not include custom computer programs, custom software development, computer operations undertaken at the direction of the department, and computer processing costs to the extent those costs exceed, in any calendar year, that county's cost of operation of the technical eligibility computer system in calendar year 1995 increased by the increase in the consumer price index for all urban consumers, all items, United States city average, after January 1, 1996.
3. If the financial condition of any county is such that it cannot make an appropriation or levy a tax for aid to dependent children temporary assistance for needy families or cannot issue warrants legally in an amount sufficient to provide the necessary funds to comply with the provisions of this chapter, the board of county commissioners shall report such fact to the state agency. After a hearing before the state agency, and such investigation as the state agency may make, the state agency may increase the amount to be supplied from state funds and adjust accordingly the amount to be supplied from county funds.

⁶ **SECTION 67. AMENDMENT.** Section 50-09-20 of the North Dakota Century Code is amended and reenacted as follows:

⁵ Section 50-09-20 was repealed by section 13 of House Bill No. 1041, chapter 403; amended by section 67 of House Bill No. 1226, chapter 404; and repealed by section 79 of House Bill No. 1226, chapter 404.

⁶ Section 50-09-20 was repealed by section 13 of House Bill No. 1041, chapter 403; amended by section 66 of House Bill No. 1226, chapter 404; and repealed by section 79 of House Bill No. 1226, chapter 404.

50-09-20. Appropriation of county funds.

1. For the purpose of carrying out the provisions of this chapter, the board of county commissioners of each county annually shall appropriate and make available an amount sufficient to pay:
 1. a. Local expenses of administration and the county's share of assistance payments as specified in section 50-09-24 of temporary assistance for needy families;
 2. b. Local expenses of administration of the child support enforcement program; and
 3. c. Local expenses of administration and the county's share of program costs of the early childhood services program, job opportunity and basic skills training program, transportation program, and case management program as specified in section 50-09-24 of child care assistance programs and employment and training programs.
2. For purposes of this section, "local expenses of administration" include costs for personnel, space, equipment, computer software, materials, travel, utilities, and related costs, and the indirect costs properly allocated to those costs. The term does not include initial acquisition of computers and related hardware approved by the department for the training, education, employment, and management program, custom computer programs, custom software development, computer operations undertaken at the direction of the department, and computer processing costs to the extent those costs exceed, in any calendar year, that county's cost of operation of the technical eligibility computer system in calendar year 1995 increased by the increase in the consumer price index for all urban consumers, all items, United States city average, after January 1, 1996.
3. If the financial condition of any county is such that it cannot make an appropriation or levy a tax for ~~aid to dependent children temporary assistance for needy families~~ or cannot issue warrants legally in an amount sufficient to provide the necessary funds to comply with the provisions of this chapter, the board of county commissioners shall report such fact to the state agency. After a hearing before the state agency, and such investigation as the state agency may make, the state agency may increase the amount to be supplied from state funds and adjust accordingly the amount to be supplied from county funds.

⁷ **SECTION 68. AMENDMENT.** Section 50-09-20.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-09-20.1. Amounts state liable for - Reimbursement by state. ~~The~~

⁷ Section 50-09-20.1 was repealed by section 13 of House Bill No. 1041, chapter 403, and also repealed by section 79 of House Bill No. 1226, chapter 404.

1. Except as provided in subsection 2, the state agency shall reimburse each county, upon claim being made therefor by the county agency, for fifty:
 - a. Fifty percent of the amount expended by the county agency in excess of the amount provided by the federal government for the administration of the early childhood services program, the job opportunity and basic skills training program, the transportation program, and the case management program temporary assistance for needy families program; and
 - b. Seventy-five percent of the amount expended by the county agency for the administration of the child care assistance program and employment and training programs provided under this chapter.
2. After January 1, 1998, the state agency shall not reimburse for any increased costs associated with achieving caseload ratios of sixty-five cases to one worker in the training, education, employment, and management program or increased costs for travel and training expended by a county agency for converting cases previously administered substantially in the form of the aid to families with dependent children program to administration in the form of the training, education, employment, and management program.

⁸ **SECTION 69. AMENDMENT.** Section 50-09-21 of the North Dakota Century Code is amended and reenacted as follows:

50-09-21. Amount county liable for - Reimbursement by county.

1. Each county shall reimburse the state agency, upon claim being made therefor by the state agency, for ~~one-fourth of the amount expended, in the county, for aid to dependent children~~ each county's share of all counties' shares of program costs of the temporary assistance for needy families program, and program costs of the early childhood services program, job opportunity and basic skills training program, transportation program, and case management program, in excess of the amount provided by the federal government for assistance payments to dependent children and for the program costs and employment and training programs provided under this chapter. For purposes of this section, "all counties' shares of program costs" is equal to five and two-tenths percent of statewide program costs of the temporary assistance for needy families program, the child care assistance program, and employment and training programs provided under this chapter.
2.
 - a. Each county shall reimburse the state agency, upon claim being made therefor by the state agency, for ~~an amount equal to one-half of that county's share of all counties' shares based upon the combined percentage average of the four-year period beginning November 1983 and ending October 1987, and the one-year period beginning November 1986 and ending October 1987, plus one-half~~

⁸ Section 50-09-21 was repealed by section 13 of House Bill No. 1041, chapter 403; also amended by section 70 of House Bill No. 1226, chapter 404; and also repealed by section 79 of House Bill No. 1226, chapter 404.

~~of that county's share of all counties' shares allocated according to each county's percentage of population of persons under age eighteen according to the 1980 census, that county's share of one-fourth of the amount expended in the state in excess of any amount provided by the federal government under title IV-E of the Social Security Act [94 Stat. 501; 42 U.S.C. 670 et seq.], as amended, for payments for children approved and granted foster care for children or subsidized adoption, without regard to that child's eligibility for benefits under title IV-E of the Social Security Act.~~

- b. Each county's share of all counties' shares must be calculated under a formula established by the department through consultation with county representatives. The formula must:
- (1) Include consideration of the most recent census data or official census estimates of the number of youth in each county;
 - (2) Include consideration of recent expenditures for foster care for youth from each county; and
 - (3) Be established by policy, and not by rule.

⁹ **SECTION 70. AMENDMENT.** Section 50-09-21 of the North Dakota Century Code is amended and reenacted as follows:

50-09-21. Amount county liable for - Reimbursement by county.

- ~~1. Each county shall reimburse the state agency, upon claim being made therefor by the state agency, for one-fourth of the amount expended, in the county, for aid to dependent children and program costs of the early childhood services program, job opportunity and basic skills training program, transportation program, and case management program, in excess of the amount provided by the federal government for assistance payments to dependent children and for the program costs.~~
- ~~2. Each county shall reimburse the state agency, upon claim being made therefor by the state agency, for an amount equal to one-half of that county's share of all counties' shares based upon the combined percentage average of the four-year period beginning November 1983 and ending October 1987, and the one-year period beginning November 1986 and ending October 1987, plus one-half of that county's share of all counties' shares allocated according to each county's percentage of population of persons under age eighteen according to the 1980 census, that county's share of one-fourth of the amount expended in the state in excess of any amount provided by the federal government under title IV-E of the Social Security Act [94 Stat. 501; 42 U.S.C. 670 et seq.], for payments for children approved and granted foster care for children or~~

⁹ Section 50-09-21 was repealed by section 13 of House Bill No. 1041, chapter 403; also amended by section 69 of House Bill No. 1226, chapter 404; and also repealed by section 79 of House Bill No. 1226, chapter 404.

subsidized adoption, without regard to that child's eligibility for benefits under title IV-E of the Social Security Act.

2. Each county's share of all counties' shares must be calculated under a formula established by the department through consultation with county representatives. The formula must:
 - a. Include consideration of the most recent census data or official census estimates of the number of youth in each county;
 - b. Include consideration of recent expenditures for foster care for youth from each county; and
 - c. Be established by policy, and not by rule.

¹⁰ **SECTION 71. AMENDMENT.** Section 50-09-22 of the North Dakota Century Code is amended and reenacted as follows:

50-09-22. Procedure for reimbursement. The state agency shall keep records and accounts in relation to the expenditures for ~~aid to dependent children temporary assistance for needy families~~ in each county in North Dakota. ~~Claims for reimbursements under the provision of section 50-09-24 must be presented by the state agency to the board of county commissioners at the end of each calendar month.~~ The state agency shall certify to each county the total amount paid with respect to ~~aid to dependent children eligible for aid temporary assistance for needy families~~ from that county, and the county's share of such payments. The amount so certified must be paid to the state agency by the county treasurer upon the audit and approval of the claim in the manner provided by law. Nothing contained herein shall prevent the state agency, in cases where assistance is granted to, or on the behalf of unmarried mothers or the dependent children of unmarried mothers, from electing to assume the payment thereof without reporting the same to the board of county commissioners upon a claim for reimbursement: an election by the state agency to assume such payments without reporting the same to the counties shall relieve the counties of any liability as to such payments, but shall in no manner affect the liability of the counties as to any claim duly reported by the state agency for reimbursement.

SECTION 72. AMENDMENT. Section 50-09-24 of the North Dakota Century Code is amended and reenacted as follows:

50-09-24. Limitations of chapter. All assistance awarded under this chapter must be deemed to be awarded and to be held subject to the provisions of any amending or repealing act which may be passed, and no recipient shall have any claim for compensation, or otherwise, because ~~his~~ that recipient's assistance has been affected in any way by any amending or repealing act. Assistance provided under this chapter is not an entitlement. No person has a property interest in any assistance sought or provided under this chapter. This chapter may not be construed to require provision of assistance not required by federal law.

¹⁰ Section 50-09-22 was repealed by section 13 of House Bill No. 1041, chapter 403, and also repealed by section 78 of House Bill No. 1226, chapter 404.

SECTION 73. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Transition to training, education, employment, and management program. In counties in which a demonstration project established under section 50-06-01.8 is operating, the state agency shall supervise and direct county administration of temporary assistance to needy families, in the form of the training, education, employment, and management program. In all other counties, the state agency shall supervise and direct county administration of temporary assistance to needy families, substantially in the form of the aid to families with dependent children program established under 42 U.S.C. 601 et seq., as amended before August 22, 1996 [49 Stat. 627 et seq.], provided that the requirements of 42 U.S.C. 601 et seq., as amended by section 103 of Pub. L. 104-193, 110 Stat. 2112 et seq., as amended, are met. Beginning January 1, 1998, the state agency shall convert temporary assistance to needy families cases, previously administered substantially in the form of aid to families with dependent children cases, to administration in the form of the training, education, employment, and management program. After July 1, 1998, or as soon thereafter as may be feasible, the state agency shall supervise and direct county administration of all temporary assistance to needy families in the form of the training, education, employment, and management program.

SECTION 74. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Programs funded at state expense - Interpretation.

1. The state shall bear the cost, in excess of the amount provided by the federal government, of:
 - a. Services provided under section 50-06-06.8 and this chapter as child care assistance;
 - b. Services provided under this chapter as employment and training programs; and
 - c. Temporary assistance for needy families benefits provided under this chapter.
2. This section does not grant any recipient of services, benefits, or supplements identified in subsection 1, any service, benefit, or supplement that a recipient could not claim in the absence of this section.

SECTION 75. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Substitution of terms - Meaning of title IV-A. Whenever the term "aid to families with dependent children", or any derivative of that term, appears in this code or the North Dakota Administrative Code, used in a context that refers to a period following the effective date of a state plan submitted under section 402 of the Social Security Act, as added by title I of Pub. L. 104-193; 110 Stat. 2110, the term "temporary assistance for needy families", or a derivative of that term, must be substituted therefor. The term "title IV-A of the Social Security Act", or any derivative of that term, whenever it appears in this code or the North Dakota Administrative Code, used in a context that refers to a period following the effective date of a state plan submitted under section 402 of the Social Security Act, as added

by title I of Pub. L. 104-193; 110 Stat. 2110, refers to title IV-A of the Social Security Act, as amended by section 103 of Pub. L. 104-193; 110 Stat. 2112 et seq.

SECTION 76. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Requirements for administration of temporary assistance for needy families.

1. Except as provided in subsections 2, 3, and 5 through 7, the department of human services, in its administration of temporary assistance for needy families in the form of the training, education, employment, and management program, shall:
 - a. Provide assistance to otherwise eligible women in the third trimester of a pregnancy;
 - b. Except as provided in subdivision c, afford eligible households benefits for no more than sixty months;
 - c. Exempt up to twenty percent of the caseload from the requirements of subdivision b due to mental or physical disability of a parent or child, or mental or physical incapacity of a parent;
 - d. Unless an exemption, exclusion, or disregard is required by law, count income and assets whenever actually available;
 - e. Unless otherwise required by federal law, and except as provided in subdivision m, provide no benefits to noncitizen immigrants who arrive in the United States after August 21, 1996, for the first five years of residence in the United States, and after five years of residence, until the immigrant has ten years of work history, provide benefits only after considering the income and assets of the immigrant's sponsor;
 - f. Limit eligibility to households with total available assets, not otherwise exempted or excluded, of a value not exceeding five thousand dollars for a one-person household and eight thousand dollars for a household of two or more;
 - g. Seek approval of appropriate federal officials, and, if approved, use a simplified food stamp program to provide food stamp benefits to eligible households receiving temporary assistance for needy families;
 - h. Exclude one motor vehicle of any value in determining eligibility;
 - i. Require work activities as defined in section 6 of this Act for all household members not specifically exempted by the department of human services for reasons such as mental or physical disability of a parent or child, or mental or physical incapacity of a parent;
 - j. Establish goals and take action to prevent and reduce the incidence of out-of-wedlock pregnancies and establish numerical goals for reducing the illegitimacy rate for the state for periods through calendar year 2005;

- k. Conduct a program, designed to reach state and local law enforcement officials, the education system, and relevant counseling services, which provides education and training on the problem of statutory rape so that teenage pregnancy prevention programs may be expanded in scope to include men;
- l. Afford otherwise eligible households that have resided in this state less than twelve months benefits subject to the lifetime limit of the household's immediately previous state of residence;
- m. Provide benefits to otherwise eligible noncitizens who are lawfully present in the United States as refugees, asylees, veterans, active duty military personnel, spouses and dependents of active duty military personnel, and Cuban-Haitian entrants;
- n. Establish and enforce standards against program fraud and abuse;
- o. Establish procedures to screen and identify victims of domestic violence for referral to appropriate services which are to be incorporated into the training, education, employment, and management program assessment effective June 30, 1998;
- p. Provide an employment placement program;
- q. Implement, as soon as practicable, an electronic fund transfer system;
- r. Not exempt funds in individual development accounts;
- s. Sanction parents who, without good cause, fail to ensure dependent minor children attend school unless the child has received a high school diploma or equivalent;
- t. When appropriate, require household members to complete high school;
- u. Exempt single parents from required work activities as defined in section 6 of this Act if the exempted parent has a child under four months of age;
- v. Count only approved work activities as defined in section 6 of this Act for the purpose of measuring work participation rates;
- w. Provide for progressive sanctions, including termination of assistance to the household, if a household member fails to cooperate with work requirements;
- x. Provide for progressive sanctions, including termination of assistance to the household, if a household member fails, without good cause, to cooperate with child support activities;
- y. Deny assistance with respect to a minor child absent from the household for more than one calendar month, except as specifically provided by the state agency for absences;

- z. Require each household to participate in developing an individual responsibility plan and provide for progressive sanctions, including termination of assistance to the household, if adult and minor household members age sixteen or older fail to cooperate in developing an individual responsibility plan;
 - aa. Provide pre-pregnancy family planning services that are to be incorporated into the training, education, employment, and management program assessment effective June 30, 1998;
 - bb. Seek federal funding to assist in the evaluation of the program;
 - cc. Seek the approval of the secretary to develop and use a single application form for all economic assistance programs administered by the county social service boards;
 - dd. After June 30, 1998, except in cases of pregnancy resulting from rape or incest, not increase the assistance amount to recognize the increase in household size when a child is born to a household member who was a recipient of assistance under this chapter during the month of the child's probable conception;
 - ee. Disregard earned income as an incentive allowance for no more than twelve months; and
 - ff. Except as otherwise may be permitted by federal law, not reduce or terminate benefits based on a refusal of an individual to work if the individual is a single custodial parent caring for a child who has not attained six years of age and the individual proves a demonstrated inability to obtain needed child care because of the:
 - (1) Unavailability of appropriate child care within a reasonable distance from the individual's home or work site;
 - (2) Unavailability or unsuitability of informal child care by a relative or under other arrangements; or
 - (3) Unavailability of appropriate and affordable formal child care arrangements.
- 2. If the secretary of the United States department of health and human services determines that funds otherwise available for the temporary assistance for needy families program in this state must be reduced or eliminated should the department of human services administer the program in accordance with any provision of subsection 1, the department of human services shall administer the program in a manner that avoids the reduction or loss.
- 3. If the caseload of households provided assistance exceeds projections provided to the fifty-fifth legislative assembly by the department of human services, the department of human services, subject to the approval of the legislative council, shall administer the temporary assistance for needy families program in a manner that avoids expending or committing all funds appropriated for that purpose earlier than June 30, 1999.

4. If administratively feasible, the department may establish a program that provides for payment of assistance after performance by individuals required to engage in work activities, as defined in section 6 of this Act.
5. If the department of human services determines, subject to the approval of the legislative council, that there is insufficient worker opportunity, due to increases in the unemployment rate, to participate in work activities as defined by section 6 of this Act, the department may administer the temporary assistance for needy families program in a manner different than provided in subsection 1.
6. If the department of human services determines, subject to the approval of the legislative council, that administration of the temporary assistance for needy families program, in the manner provided by subsection 1, causes otherwise eligible individuals to become a charge upon the counties under chapter 50-01, the department may administer the program in a manner that avoids that result.
7. If projected rates of expenditures for operation of the temporary assistance for needy families program, approved by the legislative council, indicate that appropriations for that purpose will be expended or committed earlier than June 30, 1999, the department of human services shall administer the temporary assistance for needy families program in a manner that avoids that result.

SECTION 77. REPEAL. Section 14-09-09.23 of the North Dakota Century Code is repealed.

¹¹ **SECTION 78. REPEAL.** Sections 50-09-16, 50-09-17, and 50-09-22 of the North Dakota Century Code and section 50-06-06.8 of the 1995 Supplement to the North Dakota Century Code are repealed.

¹² **SECTION 79. REPEAL.** Sections 50-09-20 and 50-09-21 of the North Dakota Century Code and section 50-09-20.1 of the 1995 Supplement to the North Dakota Century Code are repealed.

SECTION 80. REPEAL. Section 50-08.1-02 of the 1995 Supplement to the North Dakota Century Code is repealed.

¹¹ Section 50-09-16 was also repealed by section 13 of House Bill No. 1041, chapter 403; section 50-09-17 was also repealed by section 13 of House Bill No. 1041, chapter 403; and section 50-09-22 was also repealed by section 13 of House Bill No. 1041, chapter 403, and amended by section 71 of House Bill No. 1226, chapter 404.

¹² Section 50-09-20 was repealed by section 13 of House Bill No. 1041, chapter 403, amended by section 66 of House Bill No. 1226, chapter 404, and amended by section 67 of House Bill No. 1226, chapter 404; section 50-09-20.1 was also repealed by section 13 of House Bill No. 1041, chapter 403, and amended by section 68 of House Bill No. 1226, chapter 404; and section 50-09-21 was also repealed by section 13 of House Bill No. 1041, chapter 403, amended by section 69 of House Bill No. 1226, chapter 404, and amended by section 70 of House Bill No. 1226, chapter 404.

SECTION 81. APPROPRIATION. There is hereby appropriated out of special funds derived from federal funds, the sum of \$200,000, or so much of the sum as may be necessary, to the department of human services for the purpose of providing child care assistance and employment and training under this Act, for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 82. LEGISLATIVE COUNCIL STUDY. The legislative council shall study the implementation of the temporary assistance for needy families program in the state during the 1997-98 interim. The study must address the issues of the simplification of all public work programs into a single system, providing a work force preparation and placement program and establishing performance-based outcome measures for all contractors, the caseload ratio established in section 50-09-20.1, the training and expertise of the managers administering training, education, employment, and management program, and the development of a tiered system of benefit support and incentives. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-sixth legislative assembly.

SECTION 83. ESTABLISHMENT OF TASK FORCE. To accomplish the goals and programs provided for in subdivisions j, k, o, and aa of section 76 of this Act, the department of human services shall establish a statewide task force that includes representatives of all relevant parties, and also includes two members of the legislative assembly appointed by the chairman of the legislative council.

SECTION 84. TRANSFER OF RESPONSIBILITIES. To provide for an orderly transfer of responsibilities under chapters 14-08.1 and 14-09 from the clerks of court to the public authority and its state disbursement unit, it is the intention of the legislative assembly that, during the periods between July 1, 1997, and April 1, 1999, with respect to the state disbursement unit activities, and between July 1, 1997, and the system implementation date, with respect to income withholding and other activities, the clerks of court and the public authority shall share responsibilities. The public authority, upon consultation with the supreme court and other representatives selected by the boards of county commissioners, shall prepare schedules for the transfer of specific responsibilities on a county-by-county and case-by-case basis. As soon as the public authority is able to assume responsibilities with respect to a particular county, it is the intention of the legislative assembly that responsibilities with respect to newly issued and newly amended child support orders be assumed by the public authority.

SECTION 85. INFORMAL GRIEVANCE PROCEDURE TO BE DEVELOPED. Before the completion of the transfer of responsibilities under section 84 of this Act, the department of human services, in implementing programs under Title IV-D of the Social Security Act and in consultation with the clerks of court, county offices, and regional child support enforcement offices, shall develop an informal grievance procedure concerning any matter not subject to determination in a judicial proceeding. The procedure must include the department, clerks of court, county offices, and regional child support enforcement offices that provide services under Title IV-D of the Social Security Act.

SECTION 86. EFFECTIVE DATE. Section 77 of this Act becomes effective on the system implementation date as defined by section 25 of this Act.

SECTION 87. EFFECTIVE DATE. Sections 1 through 8, 12, 14 through 20, 39 through 46, 48 through 51, 53 through 55, 57 through 66, 68, 69, 71, 72, 73, 75, 76, and 80 of this Act become effective on July 1, 1997.

SECTION 88. EFFECTIVE DATE. Section 47 of this Act becomes effective on October 1, 1997.

SECTION 89. EFFECTIVE DATE. Sections 52, 67, 70, 74, and 78 of this Act become effective on January 1, 1998.

SECTION 90. EFFECTIVE DATE. Sections 9 through 11, 13, 21, 38, and 56 of this Act become effective on July 1, 1999.

SECTION 91. EFFECTIVE DATE. Section 79 of this Act becomes effective January 1, 1998, if House Bill No. 1041 becomes law and that bill includes provisions repealing North Dakota Century Code sections 50-09-20, 50-09-20.1, and 50-09-21, but is otherwise ineffective.

SECTION 92. EXPIRATION DATE. Sections 51, 66, and 69 of this Act are effective through December 31, 1997, and after that date are ineffective.

SECTION 93. EXPIRATION DATE. Section 12 of this Act is effective through June 30, 1999, and is thereafter ineffective.

Approved April 17, 1997

Filed April 17, 1997

CHAPTER 405**HOUSE BILL NO. 1284**

(Representatives Svedjan, Rose, Rennerfeldt, Gorder)
(Senators DeMers, Thane)

HIV INSURANCE PAYMENTS

AN ACT to amend and reenact section 50-06-06.9 of the North Dakota Century Code, relating to insurance payments on behalf of a person with human immunodeficiency virus infection.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-06-06.9 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-06-06.9. Insurance payments by the department. Notwithstanding any other eligibility requirements for human services programs, the department, pursuant to rules ~~promulgated~~ adopted by the department, may pay health insurance premiums, copayments, and deductibles for a person with ~~acquired immune deficiency syndrome~~ human immunodeficiency virus infection, or for any person maintaining a health insurance policy covering a person with human immunodeficiency virus infection if ~~the~~:

1. The payment of premiums, copayments, and deductibles is determined to be a cost-effective alternative to the payment of future medical assistance and economic assistance costs for that person; and
2. The department determines that the person is otherwise unable to afford the cost of the premiums, copayments, and deductibles.

Approved March 13, 1997
Filed March 13, 1997

CHAPTER 406**HOUSE BILL NO. 1036**

(Legislative Council)
(Budget Committee on Government Services)
(Representatives Martin, Kerzman)

EMOTIONAL DISORDER TREATMENT

AN ACT to amend and reenact section 50-06-06.13 of the North Dakota Century Code, relating to an out-of-home treatment program for children with serious emotional disorders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-06-06.13 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-06-06.13. Treatment services for severely emotionally disturbed child children with serious emotional disorders. The department ~~may~~ shall establish in all human service regions a program ~~in up to three human service regions~~ to provide out-of-home treatment services for a ~~severely emotionally disturbed medicaid-eligible child with a serious emotional disorder.~~ Before ~~Before~~ If a child ~~may be~~ is placed in an out-of-home treatment program established under this section, the juvenile court must make a judicial determination ~~that~~ as to whether the placement is in the best interests of the child. The department may not require a parent or legal guardian to transfer legal custody of the child in order to have the child placed in an out-of-home treatment program when the sole reason for the placement is the need to obtain services for the child's emotional or behavioral problems.

Approved April 3, 1997
Filed April 3, 1997

CHAPTER 407**HOUSE BILL NO. 1470**

(Representatives Svedjan, Price, Glassheim)
(Senator Solberg)

CAPITATED FEE PREMIUM TAX EXEMPTION

AN ACT to create and enact a new section to chapter 50-06 of the North Dakota Century Code, relating to an exemption to the premium tax for premium or capitated fees paid by the department of human services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

Exemption from premium tax. No tax otherwise due under section 26.1-03-17 may be required of a stock or mutual insurance company, nonprofit health service corporation, or health maintenance organization with respect to premiums, capitation payments, policy fees, or service fees collected by any third-party administrator providing administrative services paid by the department for coverage or services provided to a recipient of benefits.

Approved March 25, 1997
Filed March 26, 1997

CHAPTER 408

SENATE BILL NO. 2147

(Senators Nalewaja, Cook, LaFountain)
(Representative Sandvig)

FOSTER CARE PROVIDER FINGERPRINTING

AN ACT to create and enact a new section to chapter 50-11 of the North Dakota Century Code, relating to fingerprinting of individuals housed or employed by foster care providers; and to amend and reenact section 50-11-02 of the North Dakota Century Code, relating to terms and conditions for licensing foster care facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-11-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-11-02. License granted - Term - Conditions.

1. The department shall grant a license for the operation of a facility receiving persons for foster care, for a period of not more than two years, to reputable and responsible persons upon showing that:
 - a. The premises to be used are in fit sanitary condition and properly equipped to provide good care for all persons who may be received;
 - b. The persons in active charge of the facility are properly qualified to carry on efficiently the duties required of them;
 - c. The facility is likely to be conducted for the public good in accordance with sound social policy and with due regard to the health, morality, and well-being of all persons cared for in the facility; and
 - d. The facility will be maintained according to the standards prescribed for its conduct by the rules of the department.
2. Before licensing or approving a facility for providing foster care for children, the department may investigate the background of an individual living or working in the facility shall seek a criminal history record when required by section 2 of this Act. The department shall consider any criminal history record information available at the time a licensing or approval decision is made.
3. The department shall determine, in accordance with rules of the department to determine, whether a license may be issued to a facility that houses or employs any individual who has a criminal record.

SECTION 2. A new section to chapter 50-11 of the North Dakota Century Code is created and enacted as follows:

Criminal background investigation.

1. Except as provided in subsection 6, each facility providing foster care for children shall secure, from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under the National Child Protection Act of 1993 [Pub. L. 103-209; 107 Stat. 2490; 42 U.S.C. 5119, et seq.], as amended, from:
 - a. Any individual employed by the facility; and
 - b. Any adult living in the facility, but not being provided care in the facility.
2. The facility shall assure that information obtained under subsection 1 is provided to the department.
3. Upon receipt of all fingerprints and necessary information relating to a license request, the department shall submit the information and fingerprints to the bureau of criminal investigation. The department shall provide a copy of any response received from the bureau of criminal investigation to the facility.
4. The bureau of criminal investigation shall request a nationwide background check from the federal bureau of investigation and, upon receipt of a response, provide the response of the federal bureau of investigation to the department. The bureau shall also provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department.
5. Upon request by the operators of a facility, a law enforcement agency shall take fingerprints of persons described in subdivisions a and b of subsection 1 if the request is made for purposes of this section.
6. This section does not apply to a family foster care home for children.
7. The department shall pay the cost of securing fingerprints, any criminal history record information made available under chapter 12-60, and a nationwide background check.
8. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the costs of the fingerprinting.

Approved April 2, 1997

Filed April 3, 1997

CHAPTER 409

SENATE BILL NO. 2055

(Senators Nalewaja, Lee, Robinson)
(Representatives Jacobs, Kempenich)

CHILD CARE PROVISION PENALTY

AN ACT to amend and reenact section 50-11.1-13.1 of the North Dakota Century Code, relating to a penalty for providing certain childhood services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-11.1-13.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-11.1-13.1. Penalty for provision of services in violation of sections 50-11.1-04 and 50-11.1-06 - When applicable. A person who has been convicted of a crime against a child or is a sexual offender, as defined in section 12.1-32-15, or who has had an application for licensure or registration to provide early childhood services denied because of a finding of probable cause against that person for child abuse or neglect under chapter 50-25.1 or who has had a license or certificate of registration to provide early childhood services revoked upon a finding of probable cause against that person for child abuse or neglect under chapter 50-25.1, and who ~~continues to provide~~ provides early childhood services to any child ~~not~~, other than a child who is a member of that person's household, is guilty of a class B misdemeanor if:

1. Those services are provided after that person is required to register under section 12.1-32-15;
2. The department has denied that person's application for licensure or registration to provide early childhood services or has revoked that person's license or certificate of registration to provide early childhood services following a finding that services are required under chapter 50-25.1 and that finding has become final or has not been contested by that person; or
3. The person allows another person to be in the presence of the child receiving the services if that other person is required to register under section 12.1-32-15 or has had an application for licensure or registration to provide early childhood service denied by the department following a finding that services are required under chapter 50-25.1 and that finding has become final or has not been contested by that other person.

Approved March 5, 1997
Filed March 6, 1997

CHAPTER 410

HOUSE BILL NO. 1248

(Representatives Thoreson, Nottestad, Aarsvold, Grande)

CHARITABLE ORGANIZATION LICENSING AND REPORTS

AN ACT to amend and reenact sections 50-22-02 and 50-22-04 of the North Dakota Century Code, relating to licensing of charitable organizations and filing of annual reports by charitable organizations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-22-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-22-02. License to solicit - Term - Revocation. ~~No~~ A charitable organization may not solicit contributions from persons in this state by any means ~~whatsoever~~ without first having obtained a license from the secretary of state. The secretary of state shall investigate the financial responsibility, experience, character, and general fitness of the applicant. If the investigation ~~warrants the belief that the solicitations are for a worthy charitable purpose and that~~ indicates the applicant will conduct solicitations in accordance with the law, the secretary of state shall issue a license to the applicant, giving the applicant the right to solicit within the state until the first day of September of that year except that an initial license issued to a charitable organization in July or August following the close of the annual reporting period described in section 50-22-04 must be valid until September first of the subsequent year. If the secretary of state finds the applicant is not qualified to be issued a license, the secretary of state shall deny the application, forthwith notify the applicant of the denial, but retain the license fee. If the applicant does not fulfill the requirements for an application within ninety days of the initial date of application, the application is deemed denied and the secretary of state shall file the documentation and retain any fee received. An applicant whose application is denied for failure to complete within the ninety-day time period shall submit a new application and license fee. All fees collected under this chapter must be credited to the general fund of the state. The fee for an initial license is twenty-five dollars. A license obtained under this section is valid for no more than fourteen months the first year a license is obtained and one year thereafter, and is subject to revocation by the secretary of state at any time for just cause. The fee for a subsequent license is ten dollars.

SECTION 2. AMENDMENT. Section 50-22-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-22-04. Information required to be filed annually. Every charitable organization; ~~professional fundraiser, or professional solicitor~~ subject to this chapter which has received or solicited contributions from within this state during the previous reporting period of July first through June thirtieth shall file the following information in the manner hereinbefore provided and licensed in this state, whether or not the organization is reapplying for a license to solicit for the upcoming year, shall file an annual report along with a ten dollar fee with the secretary of state on or before the first day of September of each year. The report must be postmarked

by the United States postal service or other carrier, in a properly addressed, postage prepaid, sealed envelope.

The secretary of state may extend the filing date for the annual report of any charitable organization, if a written application for extension is received before the filing deadline. A charitable organization with a fiscal year ending within three months prior to the filing deadline may make a written request for an extension to apply to reports for subsequent years until the fiscal year is changed.

Information submitted must be given as of the close of the business on the thirty-first day of December next preceding the date herein provided for the filing of the report, or, in the alternative, the date of the end of the fiscal year next preceding this report may be used. The annual report must be filed on forms to be provided by the secretary of state on or before the first day of September of every year, whether or not the charitable organization is reapplying for a license to solicit contributions containing the following information:

1. The gross amount of the contributions pledged or collected in this state.
2. The amount thereof given or to be given to the charitable purpose represented.
3. The aggregate amount paid or received and to be paid or received for the expenses of solicitation.
4. The aggregate amount paid to or received and to be paid to or received by professional fundraisers and solicitors.

In addition, the secretary of state may make a detailed examination of the accounts of any charitable organization conducting a solicitation for funds within this state. Upon request the attorney general shall assist the secretary of state in carrying out this chapter and, for this purpose, has all powers granted by this chapter to the secretary of state. Every charitable organization subject to this chapter shall keep a full and true record in the form that will enable the charitable organization to accurately provide the information required by this chapter.

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 411**SENATE BILL NO. 2307**

(Senator W. Stenehjem)
(Representatives Mahoney, Thoreson)

CHARITABLE ORGANIZATION LICENSING

AN ACT to create and enact a new section to chapter 50-22 of the North Dakota Century Code, relating to licensing of charitable organizations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-22 of the North Dakota Century Code is created and enacted as follows:

Licensee name registration required. The secretary of state may not issue or renew a license provided for in this chapter if the name of the licensee is an entity whose name is not in some manner registered with the secretary of state as a corporation, limited liability company, trade name, fictitious name of a partnership, limited partnership, or limited liability partnership.

Approved March 19, 1997

Filed March 19, 1997

CHAPTER 412

HOUSE BILL NO. 1272 (Representatives Kerzman, Svedjan) (Senator Thane)

MEDICAID RECIPIENT FUNERAL EXPENSES

AN ACT to amend and reenact section 50-24.1-02.3 and subsection 1 of section 50-24.1-07 of the North Dakota Century Code, relating to funeral expenses in claims against the estates of former medicaid recipients.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.1-02.3 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-24.1-02.3. When ~~pre-need designated funeral plan~~ prepayments or deposits not to be considered in eligibility determination. In determining eligibility for medical assistance, the department of human services may not consider as an available resource any prepayments or deposits to a fund which total three thousand dollars or less; ~~and the interest accrued thereon, made and maintained by an applicant for or recipient of medical assistance in a fund, not commingled with any other funds,~~ designated by the applicant or recipient as set aside to pay for the applicant's or recipient's funeral. In addition, the applicant or recipient may designate all or a portion of the three thousand dollar asset limitation for funeral purposes. Interest or earnings retained in a funeral fund also may not be considered as an available resource. A ~~pre-need funeral service contract~~ prepayment or deposit designated under this section is not a multiple-party account for purposes of chapter 30.1-31. No claim for payment of funeral expenses may be made against the estate of a deceased medical assistance recipient except to the extent that funds maintained in accordance with this section total less than ~~one~~ three thousand ~~four hundred~~ dollars.

SECTION 2. AMENDMENT. Subsection 1 of section 50-24.1-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. On the death of any recipient of medical assistance who was fifty-five years of age or older when the recipient received the assistance, and on the death of the spouse of ~~such a~~ the deceased recipient, the total amount of medical assistance paid on behalf of the recipient following the recipient's fifty-fifth birthday must be allowed as a preferred claim against the decedent's estate after payment, in the following order, of:
 - a. Funeral expenses not in excess of ~~fourteen hundred~~ three thousand dollars;
 - b. Expenses of last illness;
 - c. Expenses of administering the estate, including attorney's fees approved by the court;
 - d. Claims made under chapter 50-01;

- e. Claims made under chapter 50-24.5; and
- f. Claims made under chapter 50-06.3 and on behalf of the state hospital.

Approved March 13, 1997

Filed March 13, 1997

CHAPTER 413

HOUSE BILL NO. 1039

(Legislative Council)

(Budget Committee on Home and Community Care)

(Representatives Price, Boucher, Coats)

(Senators Thane, Sand, Lindaas)

NURSING HOME RATES

AN ACT to amend and reenact subsection 4 of section 50-24.4-10 of the North Dakota Century Code, relating to nursing home rates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³ **SECTION 1. AMENDMENT.** Subsection 4 of section 50-24.4-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. The department shall establish limits on actual allowable historical operating cost per diems based on cost reports of allowable operating costs for the reporting year that begins July 1, 1987, taking into consideration relevant factors including resident needs, nursing hours necessary to meet resident needs, size of the nursing home, and the costs that must be incurred for the care of residents in an efficiently and economically operated nursing home. The limits established by the department may not be less, in the aggregate, than the sixtieth percentile of total actual allowable historical operating cost per diems for each group of nursing homes established under this chapter based on cost reports of allowable operating costs in the previous reporting year. The limits established under this subsection remain in effect until the department establishes a new base period. Until the new base period is established, the department shall adjust the limits annually using the appropriate economic change indices established in subsection 5. In determining allowable historical operating cost per diems for purposes of setting limits and nursing home payment rates, the department shall divide the allowable historical operating costs by the actual number of resident days, except that where a nursing home is occupied at less than ninety percent of licensed capacity days, the department may establish procedures to adjust the computation of the per diem to an imputed occupancy level at or below ninety percent. To encourage the development of home and community-based services as an alternative to nursing home care, the department may waive the imputed occupancy level requirements for a nursing home that the department determines to be providing significant home and community-based services in coordination with home and community-based service providers to avoid duplicating existing services. The department shall establish efficiency incentives as appropriate. The department may establish efficiency

¹³ Section 50-24.4-10 was also amended by section 1 of House Bill No. 1040, chapter 414.

incentives for different operating cost categories. The department shall consider establishing efficiency incentives in care-related cost categories. The department may combine one or more operating cost categories and may use different methods for calculating payment rates for each operating cost category or combination of operating cost categories.

Approved March 26, 1997

Filed March 27, 1997

CHAPTER 414

HOUSE BILL NO. 1040

(Legislative Council)

(Budget Committee on Home and Community Care)

(Representatives Price, Boucher, Grumbo)

(Senators Thane, Sand, Lindaas)

NURSING HOME OPERATING COST LIMITS

AN ACT to amend and reenact subsection 5 of section 50-24.4-10 of the North Dakota Century Code, relating to operating cost limits for nursing homes; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁴ **SECTION 1. AMENDMENT.** Subsection 5 of section 50-24.4-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. The department shall establish a composite index or indices ~~by determining the appropriate economic change indicators based on the average of the increase in the Data Resources, Incorporated, nursing home input price index and the increase in the consumer price index for all urban wage earners and clerical workers (all items, United States city average)~~ to be applied to specific operating cost categories or combination of operating cost categories.

SECTION 2. EXPIRATION DATE. This Act is effective through June 30, 1999, and after that date is ineffective.

Approved March 25, 1997

Filed March 26, 1997

¹⁴ Section 50-24.4-10 was also amended by section 1 of House Bill No. 1039, chapter 413.

CHAPTER 415

HOUSE BILL NO. 1335 (Representatives Nicholas, Grumbo) (Senators Krauter, Thane)

NURSING HOME DEPRECIATION RECAPTURE

AN ACT to amend and reenact section 50-24.4-15 of the North Dakota Century Code, relating to recapture of depreciation in setting nursing home rates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.4-15 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-24.4-15. Property-related costs. The department shall include in the ratesetting system for nursing homes a payment mechanism for the use of real and personal property which provides for depreciation and related interest costs. The property cost payment mechanism must:

1. Recognize to the extent allowed by federal rules the valuation basis of assets acquired in a bona fide transaction as an ongoing operation after July 1, 1985, limited to the lowest of:
 - a. Purchase price paid by the purchaser;
 - b. Fair market value at the time of sale;
 - c. Seller's cost basis, increased by one-half of the increase in the consumer price index for all urban consumers (United States city average) from the date of acquisition by the seller to the date of acquisition by the buyer, less accumulated depreciation; ~~plus recaptured depreciation;~~ or
 - d. Seller's cost basis, increased by one-half of the increase in the Dodge construction index from the date of acquisition by the seller to the date of acquisition by the buyer, less accumulated depreciation; ~~plus recaptured depreciation.~~
2. Recognize depreciation on land improvements, buildings, and fixed equipment acquired, as an ongoing operation over the estimated useful remaining life of the asset as determined by a qualified appraiser.
3. Recognize depreciation on movable equipment acquired as an ongoing operation after August 1, 1995, over a composite remaining useful life.
4. ~~Provide, upon the sale of a facility after August 1, 1995, for the recapture of depreciation paid after June 1, 1984, on behalf of medical assistance recipients to the extent the sale price of the facility exceeds the facility's undepreciated value except:~~
 - a. ~~If the facility has been owned twenty years or longer there may be no recapture of depreciation; or~~

- ~~b.~~ If the facility has been owned more than ten years but fewer than twenty years the depreciation recapture amount must be reduced by ten percent times the number of years the facility is owned after the tenth year.
- ~~5.~~ Provide for an interest expense limitation determined by the department and established by rule.
- ~~6.~~ 5. Establish a per bed property cost limitation considering single and double occupancy construction. Property costs incurred or related to projects having received state health council certificate of need approval prior to July 1, 1994, are not subject to this limitation.
- ~~7.~~ 6. Recognize increased lease costs of a nursing home operator to the extent the lessor has incurred increased costs related to the ownership of the facility, the increased costs are charged to the lessee, and the increased costs would be allowable had they been incurred directly by the lessee.

Approved March 25, 1997
Filed March 25, 1997

SALES AND EXCHANGES

CHAPTER 416

HOUSE BILL NO. 1225

(Representatives Nottestad, Galvin, Keiser)
(Senator Mutch)

INSURANCE DEDUCTIBLE PAYMENT PROHIBITED

AN ACT to create and enact a new section to chapter 51-07 of the North Dakota Century Code, relating to the paying of an insurance deductible or offering of a rebate by a seller of goods or services; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 51-07 of the North Dakota Century Code is created and enacted as follows:

Insurance claims for excessive charges - Penalty.

1. A person who sells goods or services may not:
 - a. Advertise or promise to provide a good or service, paid for by the consumer from proceeds of an insurance policy that provides coverage for physical damage to automobiles, and to pay all or part of any applicable insurance deductible or to pay a rebate in an amount equal to all or part of any applicable insurance deductible; and
 - b. Knowingly charge an amount for the good or service that exceeds the usual and customary charge by that person for the good or service by an amount equal to or greater than all or part of the applicable insurance deductible paid by that person on behalf of an insured or remitted to an insured by that person as a rebate.
2. A person who is insured under an insurance policy that provides coverage for physical damage to automobiles may not submit a claim under the policy based on charges that are in violation of subsection 1 or may not knowingly allow a claim in violation of subsection 1 to be submitted, unless the person promptly notifies the insurer of the excessive charges.
3. A violation of this section is a class B misdemeanor.

Approved March 25, 1997
Filed March 25, 1997

CHAPTER 417**HOUSE BILL NO. 1181**

(Representatives Svedjan, Carlson, Mahoney)
(Senators Sand, Thompson)

FUEL FRANCHISE SECURITY DEPOSITS

AN ACT to create and enact a new section to chapter 51-07 of the North Dakota Century Code, relating to security deposits for motor vehicle fuel franchise agreements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 51-07 of the North Dakota Century Code is created and enacted as follows:

Motor vehicle fuel franchise agreements. A motor vehicle fuel franchise agreement may not require a security deposit except for the purpose of securing against loss of or damage to property. The dealer may satisfy any security deposit required by depositing cash or pledging a savings account or its equivalent in a financial institution in this state. Earnings accruing on a savings account or its equivalent are the property of the dealer and the dealer may withdraw the earnings annually from the account.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 418

HOUSE BILL NO. 1213

(Representatives Carlson, Belter, Thorpe)
(Senators Krebsbach, Tallackson)

VEHICLE DEALERSHIP SUCCESSION

AN ACT to create and enact two new sections to chapter 51-07 of the North Dakota Century Code, relating to succession to ownership of an automobile, truck, or farm equipment dealership.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 51-07 of the North Dakota Century Code is created and enacted as follows:

Succession to ownership of an automobile, truck, or farm equipment dealership.

1. The owner of an automobile, truck, or farm equipment dealership may appoint by trust, will, or any other valid written instrument a successor to the owner's dealership interest upon the owner's death or incapacity.
2. Unless the manufacturer, wholesaler, or distributor has good cause to refuse to honor the succession, the successor may succeed to the ownership of the dealership under the existing franchise if:
 - a. Within ninety days of the owner's death or incapacity, the successor gives written notice of the successor's intent to succeed to ownership of the dealership; and
 - b. The successor agrees to be bound by all the terms and conditions of the franchise agreement with the prior owner.
3. Upon request, the successor shall promptly provide the manufacturer, wholesaler, or distributor evidence of the successorship appointment, as well as personal and financial information reasonably necessary to determine whether the succession should be honored by the manufacturer, wholesaler, or distributor.

SECTION 2. A new section to chapter 51-07 of the North Dakota Century Code is created and enacted as follows:

Refusal to honor succession.

1. If a manufacturer, wholesaler, or distributor believes that good cause exists to refuse to honor the intended succession under section 1 of this Act, then the manufacturer, wholesaler, or distributor shall serve the named successor written notice of refusal to honor the intended succession within sixty days of its receipt of the notice of the intended succession. The notice must contain specific grounds for the refusal to honor the succession.

2. If notice of refusal to honor the intended succession is not timely served upon the intended successor, the successor may continue the franchise subject only to termination as permitted otherwise in this chapter.
3. In determining whether good cause exists for the refusal to honor the intended succession, the manufacturer, wholesaler, or distributor has the burden of proving that the intended successor is not a person of good moral character or does not meet the franchisor's existing and reasonable standards. Good cause for refusal to honor succession does not include the owner's dealership being dualled with another manufacturer's line.

Approved April 2, 1997

Filed April 3, 1997

CHAPTER 419

HOUSE BILL NO. 1274

(Representative Keiser)
(Senator Krebsbach)

REVOLVING CHARGE ACCOUNT CHARGES

AN ACT to create and enact two new sections to chapter 51-14 of the North Dakota Century Code, relating to additional charges on revolving charge accounts and revolving charge agreement credit extensions; and to amend and reenact sections 51-14-01, 51-14-02, and 51-14-03 of the North Dakota Century Code, relating to revolving charge agreements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-14-01 of the North Dakota Century Code is amended and reenacted as follows:

51-14-01. Definitions. In this chapter, unless the context ~~or subject matter~~ otherwise requires:

1. "Credit service charge" means the amount, however expressed, which the retail buyer contracts to pay or pays the retail seller in excess of the ~~cash sale price of personal property~~ amount of credit extended, representing the total charges by the retail seller incident to investigating and ~~making a retail installment sale~~ extending credit under a revolving charge agreement and for extending to the retail buyer the privilege of paying ~~in installments~~ over a period of time therefor.
2. "Retail buyer" or "buyer" means a person who buys personal property from a retail seller, or to whom a retail seller otherwise extends credit, pursuant to a revolving charge agreement.
3. "Retail seller" or "seller" means a person who agrees to sell or sells goods or services pursuant to a revolving charge agreement; ~~including without limitation,~~ and a state-chartered or national bank in issuing bank credit cards for that extends credit by the advancement of moneys thereunder or the sale of goods or services thereunder payment for goods or services under a revolving charge agreement.
4. "Revolving charge agreement" means a written instrument, defining the terms of ~~retail installment sales made~~ credit extended from time to time pursuant thereto, pursuant to which the buyer's total unpaid balance thereunder, whenever incurred, is payable ~~in installments~~ over a period of time and under the terms of which a credit service charge, other than the portion thereof consisting of late payment or other charges, is to be computed in relation to the buyer's unpaid balance from time to time.

SECTION 2. AMENDMENT. Section 51-14-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

51-14-02. Contents of revolving charge agreements - Requirements for delivery of monthly statements - Exception. Every revolving charge agreement must

be in writing and must be ~~signed~~ accepted by the retail buyer. As used in this section, "accepted" means the buyer has signed the revolving charge agreement, the buyer has used the account issued under a revolving charge agreement, or within thirty days from the date of issuance the buyer has not canceled by written notice a credit card or other access device issued under a revolving charge agreement. A copy of any such the revolving charge agreement must be delivered or mailed to the retail buyer by the retail seller ~~prior to~~ before the date on which the first payment is due ~~thereunder~~ under the agreement. ~~Such agreements~~ A revolving charge agreement must state the amount and rate of the credit service charge to be charged and paid ~~pursuant thereto~~ under the agreement. ~~Such~~ The credit service charge, exclusive of late payment or other fees included therein, must be set forth in ~~such~~ the revolving charge agreement in terms of a monthly or annual percentage rate to be applied to the balance outstanding from time to time ~~thereunder~~ under the agreement, as of the beginning or end of each billing period or on a daily basis. Upon written notice, a seller may change the terms of any revolving charge agreement, including the credit service charge, if this right of amendment has been reserved. A change under this authority is effective as to existing balances, if within twenty-five days of the effective date of the change, the buyer does not furnish written notice to the seller that the buyer does not agree to abide by the changes. Upon receipt of this written notice by the seller, the buyer has the remainder of the time under the existing terms in which to pay all sums owed to the seller. Any request for additional credit under a revolving charge agreement, including use of a credit card issued under the agreement, after the effective date of the change of terms, including a change in the credit service charge, is deemed to be an acceptance of the new terms, even though the twenty-five days has not expired. The retail seller under a revolving charge agreement shall promptly supply the retail buyer under ~~such~~ the agreement with a statement as of the end of each monthly period or other regular period agreed upon by the retail seller and the retail buyer, in which there is any unpaid balance thereunder. Such statement must recite the following:

1. The unpaid balance under the revolving charge agreement at the beginning or end of the period.
2. An identification of the goods or services purchased, the cash purchase price and the date of each purchase, unless otherwise furnished by the retail seller to the retail buyer by sales slip, memorandum, or otherwise.
3. The payments made by the retail buyer to the retail seller and any other credits to the retail buyer during the period.
4. The amount of the credit service charge, if any, and also the percentage annual simple interest equivalent of ~~such~~ this amount.
5. A legend to the effect that the retail buyer may at any time pay ~~his~~ the total indebtedness.

The items need not be stated in the sequence or order set forth above. Additional items may be included to explain the computations made in determining the amount to be paid by the retail buyer. If a revolving charge or credit account is also subject to the Truth in Lending Act [15 U.S.C. 1601-1667e], the seller may, instead of complying with this section, comply with all requirements of the Truth in Lending Act.

SECTION 3. AMENDMENT. Section 51-14-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

51-14-03. Limitation of credit service charge. ~~A seller may, in~~ In a revolving charge agreement, a seller may contract for and, if so contracted for, the seller or holder ~~thereof~~ of the agreement may charge, receive, and collect the service charge authorized by this section. The service charge may not exceed the amount agreed to by the parties ~~computed on the outstanding indebtedness from month to month~~. In the event any payment by a buyer is insufficient to pay both the credit service charge and that portion of the outstanding indebtedness then due, ~~such~~ the payments must first be applied to the credit service charge then due.

SECTION 4. A new section to chapter 51-14 of the North Dakota Century Code is created and enacted as follows:

Additional charges on revolving charge accounts. The seller or holder of a revolving charge account may collect a late payment or other charge not to exceed the amount agreed to by the parties in the revolving charge account agreement.

SECTION 5. A new section to chapter 51-14 of the North Dakota Century Code is created and enacted as follows:

Application of other provisions. Credit extended by a seller or holder of a revolving charge agreement to a buyer is not subject to chapter 13-03, 13-03.1, or 47-14.

Approved April 8, 1997
Filed April 8, 1997

CHAPTER 420

SENATE BILL NO. 2286

(Senators Wanzek, Mathern, Nething)
(Representatives Aarsvold, Kretschmar, Murphy)

ASSISTIVE TECHNOLOGY DEVICE WARRANTIES

AN ACT to create and enact a new chapter to title 51 of the North Dakota Century Code, relating to assistive technology device warranties; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 51 of the North Dakota Century Code is created and enacted as follows:

Definitions. In this chapter, unless the context otherwise requires:

1. "Assistive technology device" means any item, piece of equipment, or product system that a consumer purchases or accepts transfer of in this state and which is used to increase, maintain, or improve the functional capabilities of individuals with disabilities.
 - a. The term includes:
 - (1) Manual wheelchairs, motorized wheelchairs, motorized scooters, and other aids that enhance the mobility or positioning of an individual, such as positioning features, the switches and controls for any motorized or nonmotorized features, and hydraulic or nonhydraulic lifts or elevators designed to transport an individual from one location or level to another in private personal vehicles or private residences.
 - (2) Telephone communication devices for the deaf, assistive listening devices, and other aids that enhance an individual's ability to hear, except for hearing instruments excluded by subdivision b.
 - (3) Voice-synthesized computer modules, optical scanners, talking software, braille printers, artificial larynges, voice amplification devices, alternative augmentative communication devices, and other devices that enhance an individual's ability to communicate, except for those items excluded by subdivision b.
 - (4) Voice recognition computer equipment, software and hardware accommodations, switches, and other forms of alternative access to computers.
 - (5) Adapted environmental control units.
 - (6) Any other assistive device, instrument, apparatus, or any component, part, or accessory that enables an individual with

- a disability to perform tasks such as communicating, speaking, seeing, hearing, maneuvering, moving, walking, standing, reaching, grasping, working, sleeping, learning, or caring for oneself, or which are used or intended to be used to assist, affect, or replace the structure or any function of the body of an individual with a disability, except for those items excluded by subdivision b.
- b. The term does not include:
- (1) Devices that are modified or customized pursuant to consumer design and specifications;
 - (2) Hearing instruments as defined in subsection 2 of section 43-33-01;
 - (3) Eyeglasses;
 - (4) A surgical implant performed by a physician or surgeon; or
 - (5) A restoration or dental prosthesis provided by a dentist.
2. "Commercial lessor" means a person who is in the business of leasing assistive technology devices to consumers, or who holds the lessor's rights.
3. "Commercial seller" means a person who is in the business of selling or manufacturing assistive technology devices.
4. "Consumer" means:
- a. The purchaser of an assistive technology device from a commercial seller for personal use;
 - b. A person to whom an assistive technology device is transferred for personal use when all express warranties have not yet expired;
 - c. A person who may enforce the warranty on an assistive technology device;
 - d. A person who leases an assistive technology device from a commercial lessor; or
 - e. The parent or guardian of a person who is a consumer under subdivisions a through d.
5. a. "In need of repair" means:
- (1) A specific condition, generic defect, or malfunction that substantially impairs the use, value, or safety of an assistive technology device or any of its component parts; or
 - (2) The assistive technology device or a component of the assistive technology device fails to conform to:
 - (a) Any applicable express warranties; or

- (b) Any implied warranties including the implied warranty of merchantability described in section 41-02-31 and the implied warranty of fitness for a particular purpose described in section 41-02-32.
- b. The term does not include a condition or defect that is the result of abuse or unforeseen alteration of the assistive technology device by the consumer.
- 6. "Loaner" means an assistive technology device that is loaned to the user without charge while repairs are made to the user's assistive technology device. A loaner must:
 - a. Be in good working order;
 - b. Perform the essential functions of the assistive technology device that is being repaired, considering the needs of the user; and
 - c. Not create a threat to the safety of the user.
- 7. "Manufacturer" means:
 - a. A person who manufactures or assembles assistive technology devices;
 - b. A person who manufactures or assembles any part of an assistive technology device; and
 - c. All persons involved in the manufacture, distribution, or sales of assistive technology devices up to the final retail seller or commercial lessor.
- 8. "Reasonable attempt to repair" means that, within one year after first delivery of the assistive technology device to a consumer or within the life of an express warranty, whichever is longer:
 - a. The assistive technology device is presented to the commercial seller in need of repair at least four times and it is again in need of repair; or
 - b. The assistive technology device is in need of repair and available to the seller for repair for at least thirty days. These thirty days may be consecutive or nonconsecutive.
- 9. "Transaction costs" means expenses caused by a covered repair including the costs of a loaner.

Express written warranties for assistive technology devices.

- 1. A manufacturer who sells an assistive technology device to a consumer, either directly or through another commercial seller, shall furnish the consumer with an express written warranty to preserve and maintain the utility and performance of the assistive technology device.
- 2. The express written warranty must be in effect for at least one year after first delivery of the assistive technology device to the consumer.

3. If a manufacturer fails to furnish an express written warranty to the consumer, the assistive technology device must be covered by an express warranty that meets the requirements of this section.
4. An express written warranty must guarantee that the assistive technology device:
 - a. Has no defects in parts or performance; and
 - b. Is free from any condition and defect that would substantially impair the device's use, value, or safety to the consumer.

Warranty claims.

1. A consumer may present a warranty claim for an assistive technology device by:
 - a. Reporting the warranty problem to the manufacturer, the commercial lessor, or the commercial seller within the life of the express warranty; and
 - b. Making the assistive technology device reasonably available to the manufacturer, the commercial lessor, or the commercial seller for repair.
2. If the terms of a warranty are invoked and a warranty claim is made, the assistive technology device must be repaired at no charge to the consumer, including parts, labor, shipping, delivery, and all other costs, regardless of whether the repairs are made after the expiration of the warranty period.
3. The commercial seller or the commercial lessor shall provide the consumer with a loaner and with reimbursement for transaction costs to the consumer from the repair:
 - a. If the repair period is expected to be at least ten days; or
 - b. If the repair period is not expected to be ten days but actually is ten days or more.
4. The costs of any warranty repair, loaner, or transaction costs due the consumer from the repair are to be borne in the first instance by the commercial seller or commercial lessor. The commercial seller and the commercial lessor may have rights to reimbursement or compensation from the manufacturer or other prior parties in the sales or distribution chain. Those rights of the commercial seller or commercial lessor are not affected by this chapter.

Remedies - Sales.

1. If, after a reasonable attempt to repair by the commercial seller or manufacturer, the assistive technology device is not repaired, the warranty is considered breached.

2. If the warranty is breached, the consumer may return the assistive technology device to the commercial seller that sold the device and the consumer may choose to either:
 - a. Receive a new replacement assistive technology device from the commercial seller and be reimbursed by the commercial seller for transaction costs; or
 - b. Receive a full refund of the purchase price plus any finance charges from the commercial seller, and be reimbursed by the commercial seller for transaction costs.
3. The following conditions apply to the remedies in this section:
 - a. The commercial seller is allowed up to thirty days after return of the original assistive technology device to pay transaction costs to the consumer and to provide the consumer with either a new replacement assistive technology device or a full refund of the purchase price plus any finance charges.
 - b. If a new replacement assistive technology device is not provided or if a full refund is not paid when the consumer returns the original assistive technology device, the commercial seller must provide a loaner to the consumer to use until the commercial seller has provided to the consumer a new replacement assistive technology device or a full refund of the purchase price plus any finance charges.
 - c. The consumer may not be required to deal directly with any person other than the commercial seller that sold the assistive technology device. If agreeable, the consumer may deal with the manufacturer or other prior parties in the sales or distribution chain. If the commercial seller is no longer selling assistive technology devices, the consumer may deal with the seller's successor.
 - d. The costs of a new replacement assistive technology device, a full refund, any loaner, and transaction costs due the consumer are to be borne in the first instance by the commercial seller. The commercial seller may have rights to reimbursement or compensation from the manufacturer or other prior parties in the sales or distribution chain. Those rights of the commercial seller are not affected by this chapter.

Remedies - Leases.

1. If, after a reasonable attempt to repair by the commercial lessor or manufacturer, the assistive technology device is not repaired, the warranty is considered breached.
2. If the warranty is breached, the consumer may return the assistive technology device to the commercial lessor that leased the device and the consumer may choose to either:
 - a. Receive a new replacement assistive technology device from the commercial lessor; or

- b. Receive a full refund from the commercial lessor of all moneys paid under the lease, including all finance charges.
3. The following conditions apply to the remedies in this section:
 - a. The commercial lessor is allowed up to thirty days after return of the original assistive technology device to provide to the consumer either a new replacement assistive technology device or a full refund of all moneys paid under the lease, including any finance charges.
 - b. If a new replacement assistive technology device is not provided or if a full refund is not paid when the consumer returns the original assistive technology device, the commercial lessor shall provide a loaner to the consumer to use until the lessor has provided to the consumer a new replacement assistive technology device or a full refund of all moneys paid under the lease, including any finance charges.
 - c. The consumer may not recover transaction costs and the commercial lessor may not recover for use of the assistive technology device before the return of the device on a warranty claim.
 - d. The consumer may not be required to deal directly with any person other than the commercial lessor that leased the assistive technology device. If agreeable, the consumer may deal with the manufacturer or other prior parties in the leasing, sales, or distribution chain. If the commercial lessor is no longer dealing in assistive technology devices, the consumer may deal with the lessor's successor.
 - e. The costs of a new replacement assistive technology device, a full refund, and any loaner are to be borne in the first instance by the commercial lessor. The commercial lessor may have rights to reimbursement or compensation from the manufacturer or other prior parties in the leasing, sales, or distribution chain. Those rights of the commercial lessor are not affected by this chapter.

Thirty-day return. A commercial seller or commercial lessor who sells or leases an assistive technology device to a consumer may not refuse to accept a return of the assistive technology device within thirty days after the purchase or lease if the assistive technology device has not met the needs of the consumer.

Sale or lease of a returned assistive technology device. No assistive technology device returned by a consumer or lessor may be sold or leased again in this state unless full disclosure of the reasons for the return of the device is made to the consumer.

Other remedies - Penalties.

1. This chapter does not limit rights or remedies available to a consumer under any other law or contract.
2. Any waiver of rights by a consumer under this chapter, any waiver of the implied warranty of merchantability for an assistive technology device, and any waiver of the implied warranty of fitness for a particular purpose for an assistive technology device is void.

3. In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of this chapter. The court shall award a consumer who prevails in an action to recover damages caused by a violation of this chapter twice the amount of any pecuniary loss together with costs, disbursements, reasonable attorney fees, and any equitable relief that the court finds appropriate.
4. Any right to bring a class action under this chapter is properly regulated by the judiciary. The supreme court, acting in its rulemaking capacity or otherwise, has full authority under the Constitution of North Dakota to regulate class actions.

Approved March 20, 1997

Filed March 20, 1997

SOCIAL SECURITY

CHAPTER 421

HOUSE BILL NO. 1448

(Representatives Bernstein, Gerntholz, Kroeplin)

UNEMPLOYMENT COMPENSATION RATES AND BENEFITS

AN ACT to amend and reenact sections 52-04-05 and 52-06-05 of the North Dakota Century Code, relating to the determination of rates and unemployment compensation maximum potential benefits; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 52-04-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

52-04-05. Determination of rates.

1. For each calendar year, the bureau shall estimate the amount of income needed to pay benefits and maintain a balance in the unemployment compensation fund, that as of October 1, 1989, is equal to twenty-five percent of the average annual amount of benefits paid. On each October first after October 1, 1989, the amount of the trust fund reserve must be sixty percent of the average annual amount of benefits paid. The average annual amount of benefits paid must be computed by dividing the total amount of benefits paid and projected to be paid during the previous thirty-six months by three.
2. Rates must be determined as follows:
 - a. The income required for the calendar year must be divided by the estimated taxable wages for the calendar year. The result rounded to the next higher one one-hundredth of one percent is the average required rate.
 - b. The minimum rate for each calendar year is the average required rate, multiplied by one-fourth, rounded to the nearest one-tenth of one percent.
 - c. The maximum rate for each calendar year is the average required rate, multiplied by three, rounded to the nearest one-tenth of one percent. However, the maximum rate must be at least five and four-tenths percent.
3. a. Except as otherwise provided in this subsection, an employer's rate may not be less than the maximum rate for a calendar year unless the employer's account has been chargeable with benefits

throughout the thirty-six-consecutive-calendar-month period ending on September thirtieth of the preceding calendar year. If an employer in construction services has not been subject to the law as required, that employer qualifies for a reduced rate if the account has been chargeable with benefits throughout the twenty-four-consecutive-calendar-month period ending September thirtieth of the preceding calendar year. However, an employer in construction services must be assigned the maximum rate or seven percent, whichever is greater, for any year if, as of the computation date, the cumulative benefits charged to the employer's account equal or exceed the cumulative contributions paid on or before October thirty-first with respect to wages paid by that employer before October first of that year. An employer identified as belonging to industry group number 161, highway and street construction, except elevated highways, provided in the standard industrial classification manual, must be assigned a maximum rate or eight and one-half percent, whichever is greater, for any year if, as of the computation date, the cumulative benefits charged to the employer's account equal or exceed the cumulative contributions paid on or before October thirty-first of that year. If an employer in nonconstruction services has not been subject to the law as required, the employer in nonconstruction services qualifies for a reduced rate if the account has been chargeable with benefits throughout the twelve-consecutive-calendar-month period ending September thirtieth of the preceding calendar year.

- b. An employer that does not qualify under subdivision a is subject to a rate determined as follows:
 - (1) For each calendar year new employers must be assigned a rate of two and two-tenths percent unless the employer is classified in construction services. However, an employer must be assigned the maximum rate for any year if, as of the computation date, the cumulative benefits charged to that employer's account equal or exceed the cumulative contributions paid on or before October thirty-first with respect to wages paid by that employer before October first of that year.
 - (2) New employers in construction services must be assigned a rate of seven percent or the maximum rate, whichever is greater.
 - (3) Assignment by the bureau of an employer's industrial classification for the purposes of this section must be the two digit major group provided in the standard industrial classification manual, in accordance with established classification practices found in the standard industrial classification manual issued by the executive office of the president, office of management and budget.
4. An employer who has ceased to be liable for contributions shall continue its established experience rating account if it again becomes liable within three years from the date that it ceased to be liable. Such employer's rate, however, must be determined in accordance with subsection 3.

SECTION 2. AMENDMENT. Section 52-06-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

52-06-05. Maximum potential benefits. ~~Any~~

1. Except as provided in subsection 2, any otherwise eligible individual is entitled during the individual's benefit year to benefits for the number of times the individual's weekly benefit amount appearing in the following table on the line ~~which~~ that includes the individual's ratio of total base-period wages to highest quarter base-period wages:

Ratio of Total Base-Period Wages to High Quarter	Times Weekly Benefit Amount
1.50 to 2.29	12
2.30 to 2.44	14
2.45 to 2.59	16
2.60 to 2.74	18
2.75 to 2.89	20
2.90 to 3.04	22
3.05 to 3.19	24
3.20 or more	26

2. Any otherwise eligible individual whose entire base-period earnings were paid by an employer belonging to industry group number 161, highway and street construction, except elevated highways, pursuant to the standard industrial classification manual is entitled during the individual's benefit year to benefits for the number of times the individual's weekly benefit amount appearing in the following table on the line that includes the individual's ratio of total base-period wages to highest quarter base-period wages:

<u>Ratio of Total Base-Period Wages to High Quarter</u>	<u>Times Weekly Benefit Amount</u>
<u>1.50 to 1.73</u>	<u>12</u>
<u>1.74 to 1.97</u>	<u>14</u>
<u>1.98 to 2.21</u>	<u>16</u>
<u>2.22 to 2.45</u>	<u>18</u>
<u>2.46 to 2.69</u>	<u>20</u>
<u>2.70 to 2.93</u>	<u>22</u>
<u>2.94 to 3.17</u>	<u>24</u>
<u>3.18 or more</u>	<u>26</u>

SECTION 3. EXPIRATION DATE. Section 1 of this Act is effective through December 31, 2000, and after that date is ineffective. Section 2 of this Act is effective through December 31, 1999, and after that date is ineffective.

Approved April 9, 1997
Filed April 10, 1997

CHAPTER 422**HOUSE BILL NO. 1242**

(Representatives Wald, Wardner, Mahoney)
(Senator Goetz)

**UNEMPLOYMENT COMPENSATION
DISQUALIFICATION**

AN ACT to create and enact a new subsection to section 52-06-02 of the North Dakota Century Code, relating to North Dakota unemployment compensation disqualification.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 52-06-02 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

With respect to services to which subdivisions f and g of subsection 17 of section 52-01-01 apply, if the services are provided to or on behalf of an educational institution, benefits are not payable under the same circumstances and subject to the same terms and conditions as described in subsections 9, 10, 11, and 12.

Approved March 25, 1997

Filed March 25, 1997

CHAPTER 423

HOUSE BILL NO. 1120

(Representative Keiser)

(At the request of Job Service North Dakota)

UNEMPLOYMENT BENEFIT TAX WITHHOLDING

AN ACT to amend and reenact section 52-06-30 of the North Dakota Century Code, relating to voluntary withholding of federal income tax and state income tax from unemployment compensation benefits; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 52-06-30 of the North Dakota Century Code is amended and reenacted as follows:

52-06-30. Assignment of benefits prohibited - Benefits exempt from remedies for collection of debt - Exception.

1. No assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under the North Dakota Unemployment Compensation Law is valid. Such rights to benefits are exempt from levy, execution, attachment, or any other remedy ~~whatsoever~~ provided for the collection of a debt. Benefits received by any individual, as long as they are not mingled with other funds of the recipient, are exempt from any remedy ~~whatsoever~~ for the collection of all debts except debts incurred for necessities furnished to such the individual, ~~his~~ that person's spouse, or dependents during the time when ~~such the~~ individual was unemployed. No waiver of any exemption provided for in this ~~section~~ subsection is valid. However, this ~~section~~ subsection does not impair the operation of subsection 2 or section 52-06-06.1.
2. An individual filing a new claim for unemployment compensation benefits, at the time of filing the claim, must be advised that:
 - a. Unemployment compensation is subject to federal income tax and state income tax;
 - b. Requirements exist pertaining to estimated federal and state tax payments;
 - c. The individual may elect to have federal income tax deducted and withheld from the individual's payment of unemployment compensation benefits at the amount specified in the federal Internal Revenue Code;
 - d. The individual, having elected to have federal income tax withheld, may also elect to have state income tax deducted and withheld from the individual's payment of unemployment compensation at a rate determined by the tax commissioner pursuant to section 57-38-59; and

- e. The individual is permitted to change a previously elected withholding status. Amounts deducted and withheld from unemployment compensation must remain in the unemployment fund until transferred to the federal and state taxing authority as payment of income tax. The bureau shall follow all procedures specified by the United States department of labor, the federal internal revenue service, and the tax commissioner pertaining to the deducting and withholding of income tax. Amounts must be deducted and withheld under this section only after amounts are deducted and withheld for any overpayments of unemployment compensation, child support obligations, or any other amounts required to be deducted and withheld under this chapter.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on January 1, 1997.

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

Approved February 20, 1997
Filed February 21, 1997

CHAPTER 424

SENATE BILL NO. 2102

(Senators Krebsbach, C. Nelson)
(At the request of Job Service North Dakota)

OASIS BENEFITS

AN ACT to amend and reenact subsection 9 of section 52-09-20 of the North Dakota Century Code, relating to primary insurance benefits under the old-age and survivor insurance system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 52-09-20 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9. "Primary insurance benefit" means the sum of the following:
 - a. (1) Fifty percent of the amount of an individual's average monthly wage if the average monthly wage does not exceed seventy-five dollars; or
 - (2) If the average monthly wage exceeds seventy-five dollars, thirty-seven dollars and fifty cents, plus fifteen percent of the amount by which the average monthly wage exceeds seventy-five dollars and does not exceed two hundred fifty dollars;
 - b. One percent of the amount computed under subdivision a, multiplied by the number of years in which two hundred dollars or more of wages were paid to the individual; and
 - c. (1) Effective August 1, ~~1995~~ 1997, ~~three hundred eighty five hundred thirty-three~~ three hundred eighty five hundred thirty-three dollars and thirty-three cents; or
 - (2) Effective August 1, ~~1996~~ 1998, ~~four hundred six hundred sixty-six~~ four hundred sixty-six dollars and sixty-six cents.

Approved March 20, 1997
Filed March 20, 1997

CHAPTER 425**SENATE BILL NO. 2101**

(Senators Krebsbach, C. Nelson)
(At the request of Job Service North Dakota)

JOB SERVICE RETIREMENT PROGRAMS

AN ACT to amend and reenact subsection 1 of section 52-11-01 of the North Dakota Century Code, relating to job service North Dakota and national guard retirement programs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 52-11-01 of the North Dakota Century Code is amended and reenacted as follows:

1. Job service North Dakota and the North Dakota national guard are authorized either jointly or severally to establish employee retirement programs by contract with an insurance company, state or national bank and trust company, or an investment company, authorized under the law to do business in this state: Such state agencies, the state investment board, or the North Dakota public employees retirement system. Except for a retirement program established under chapter 54-52, the North Dakota national guard shall prepare specifications of the terms of such the retirement programs program which must be submitted to not less than three such companies or agencies with a request for bids upon such the retirement program contracts. After the submission of at least three bids, the executive director of job service North Dakota and the adjutant general shall jointly or separately compare such the bids, and with the approval of the governor, shall execute joint or separate contracts a contract for such the retirement programs program with the company or agency submitting the lowest and best bid. Job service North Dakota is authorized to administer the retirement plan established in 1961 and frozen to new entrants in 1980, for employees of job service North Dakota.

Approved April 2, 1997
Filed April 2, 1997

SPORTS AND AMUSEMENTS

CHAPTER 426

HOUSE BILL NO. 1128

(Representative Poolman)

(At the request of the Secretary of State)

BOXING OFFICIAL LICENSE FEES

AN ACT to amend and reenact section 53-01-07 of the North Dakota Century Code, relating to license fees for boxing officials; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 53-01-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-01-07. Duties of state athletic commissioner. The secretary of state shall supervise all boxing, kickboxing, or sparring exhibitions held in the state and may:

1. Adopt rules governing the conduct of boxing, kickboxing, and sparring exhibitions.
2. Establish license fees for all boxers ~~and~~, kickboxers, ~~and~~ boxing, and kickboxing, ~~and~~ sparring promoters, managers, judges, timekeepers, cornerpersons, knockdown counters, matchmakers, and referees.
3. Establish by rule a fee based on the percentage of gross revenues from any boxing, kickboxing, or sparring exhibition held in this state to pay for the expenses of members of the athletic advisory board. A fee established under this subsection may not exceed one percent of the gross revenues of the exhibition from any and all sources including cable television and pay-per-view telecasts of the event, exclusive of any federal tax thereon.

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

Approved January 31, 1997

Filed January 31, 1997

CHAPTER 427**HOUSE BILL NO. 1451**

(Representatives Devlin, Froseth, Kunkel, Nelson, Weisz)
(Senator Andrist)

OFFICER AT DANCES AND CONCERTS

AN ACT to amend and reenact section 53-02-08 of the North Dakota Century Code, relating to public dances, music festivals, or public concerts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 53-02-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-02-08. Officer of law to be in attendance at public dance, music festival, or public concert. The sheriff in any county in which any public dance, music festival, or public concert is held outside of an incorporated city, and the chief peace officer of the city where the dance, music festival, or public concert is held within the limits of a city, ~~shall~~ may police ~~such~~ the dance, music festival, or public concert so that law and order are there maintained. The sheriff or the chief peace officer shall determine the number, if any, of deputy sheriffs, special officers, or licensed private security officers needed to police the dance, music festival, or public concert properly. The person conducting ~~any~~ such the dance, music festival, or public concert, before the dance, music festival, or public concert is held, shall pay to ~~such~~ the sheriff, peace officer, or licensed private security provider the expense of any deputy sheriff, special officer, or licensed private security officer required for the proper policing of ~~such~~ the dance, music festival, or public concert, and no ~~such~~ dance, music festival, or public concert may be permitted to proceed unless ~~such~~ the officer or officers are present and the fees therefor are paid. The holding of ~~such~~ a dance, music festival, or public concert without giving notice ~~thereof~~ of the dance, music festival, or public concert to the sheriff of the county or the peace officer of the city, and without making provision for the policing ~~thereof~~ of the dance, music festival, or public concert, is unlawful. No person, directly or indirectly interested or concerned in the giving, holding, or conducting of ~~such~~ a public dance, music festival, or public concert, or connected with the person conducting the same, is eligible to appointment under this section as a special officer.

Approved March 13, 1997
Filed March 13, 1997

CHAPTER 428

HOUSE BILL NO. 1167

(Judiciary Committee)

(At the request of the State Gaming Commission)

GAMES OF CHANCE REVISIONS

AN ACT to amend and reenact subsection 5 of section 12-60-16.4, sections 40-57.3-02, 53-06.1-01, 53-06.1-01.1, 53-06.1-03, 53-06.1-06, 53-06.1-07.2, 53-06.1-07.3, 53-06.1-07.4, 53-06.1-08, 53-06.1-09, 53-06.1-10, 53-06.1-10.1, 53-06.1-11, 53-06.1-11.1, 53-06.1-12, 53-06.1-12.3, 53-06.1-14, 53-06.1-15.1, and 53-06.1-16 of the North Dakota Century Code, relating to games of chance and moneys in a city visitors' promotion capital construction fund; to repeal sections 53-06.1-01.2, 53-06.1-02, 53-06.1-03.1, 53-06.1-03.2, 53-06.1-03.3, 53-06.1-05.1, 53-06.1-06.1, 53-06.1-07, 53-06.1-07.1, 53-06.1-12.1, 53-06.1-12.2, 53-06.1-13, 53-06.1-13.1, 53-06.1-15, 53-06.1-15.2, 53-06.1-15.3, 53-06.1-15.4, 53-06.1-16.1, 53-06.1-16.2, and 53-06.1-17 of the North Dakota Century Code, relating to games of chance; to provide a penalty; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ **SECTION 1. AMENDMENT.** Subsection 5 of section 12-60-16.4 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. Class A misdemeanor offenses in ~~sections~~ section 53-06.1-16 ~~and 53-06.1-16.4.~~

SECTION 2. AMENDMENT. Section 40-57.3-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-57.3-02. City visitors' promotion fund - City visitors' promotion capital construction fund - Visitors' committee - Establishment - Purpose. The governing body of any city which imposes a city tax pursuant to section 40-57.3-01 or 40-57.3-01.1 shall, as appropriate, establish a city visitors' promotion fund, a city visitors' promotion capital construction fund, and a visitors' committee. The visitors' committee shall serve as an advisory committee to the city governing body in administering the proceeds from the taxes available to the city under this chapter. The moneys in the visitors' promotion fund must be used generally to promote, encourage, and attract visitors to come to the city and use the travel and tourism facilities within the city. The moneys in the visitors' promotion capital construction fund must be used generally for tourism or the purchase, equipping, improving, construction, maintenance, repair, and acquisition of buildings or property consistent with visitor attraction or promotion. The committee shall consist of five members appointed by the governing body of the city. These appointees shall serve without compensation, except for reimbursement for necessary expenses. Committee

¹ Section 12-60-16.4 was also amended by section 1 of Senate Bill No. 2085, chapter 117, and section 1 of Senate Bill No. 2160, chapter 347.

members shall serve for a term of four years, except that two of those initially appointed must be appointed for an initial term of two years. Vacancies must be filled in the same manner as the initial appointment. The committee shall elect a chairperson and vice chairperson from among its members to serve for a term of two years.

² **SECTION 3. AMENDMENT.** Section 53-06.1-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-01. Definitions. As used in this chapter:

1. "Adjusted gross proceeds" means, ~~except for poker,~~ gross proceeds less cash prizes, cost of merchandise prizes, sales tax on bingo cards, pull tab excise tax, and federal excise tax and interest imposed under section 4401 of the Internal Revenue Code [26 U.S.C. 4401]. ~~In poker,~~ "adjusted gross proceeds" means ~~time buy-ins and tournament fees.~~
2. "Charitable organization" means an organization incorporated as a nonprofit corporation whose primary purpose is for relief of poor, distressed, underprivileged, diseased, elderly, or abused persons, prevention of cruelty to children or animals, or ~~other similar~~ condition of public concern, which has been actively fulfilling its primary purpose within this state for the two immediately preceding years.
3. "Civic and service organization" means an organization incorporated as a nonprofit corporation whose primary purpose is to ~~engage in a civic and service activity~~ promote the common good and social welfare of a community as a sertoma, lion, rotary, jaycee, kiwanis ~~organization,~~ or similar organization, and which has been actively fulfilling its primary purpose within this state for the two immediately preceding years.
4. "~~Commission~~" means ~~the state gaming commission.~~
5. "Distributor" means a person that sells, markets, or ~~otherwise~~ distributes equipment usable in the ~~lawful~~ conduct of games.
6. "~~Educational, charitable, patriotic, fraternal, religious, or other public-spirited uses~~" are:
 - a. ~~Uses for stimulating and promoting state and community-based economic development programs within the state which improve the quality of life of community residents.~~
 - b. ~~Uses for developing, promoting, and supporting tourism within a city, county, or the state.~~
 - c. ~~Uses benefiting an indefinite number of persons by bringing them under the influence of education, cultural programs, or religion which include disbursements to provide:~~

² Section 53-06.1-01 was also amended by section 1 of Senate Bill No. 2318, chapter 429.

- (1) Scholarships for students, if the disbursement is deposited in a scholarship fund for defraying the cost of education to students and the scholarships are awarded through an open and fair selection process.
 - (2) Supplementary assistance to a public or private nonprofit educational institution registered with or accredited by any state.
 - (3) Assistance to libraries and museums.
 - (4) Assistance for the performing arts and humanities.
 - (5) Preservation of cultural heritage.
 - (6) Youth community and athletic activities.
 - (7) Adult amateur athletic activities within the state, such as softball, including uniforms and equipment.
 - (8) Maintenance of places of public worship or support of a body of communicants, gathered in common membership for mutual support and edification in piety, worship, or religious observances.
 - (9) Scientific research.
- d. Uses benefiting an indefinite number of persons by relieving them of disease, suffering, or constraint which include disbursements to provide:
- (1) Relief to an individual or family suffering from poverty or homelessness.
 - (2) Encouragement and enhancement of the active participation of the elderly in our society.
 - (3) Services to the abused.
 - (4) Services to persons with an addicted behavior toward alcohol, gambling, or drugs.
 - (5) Funds to combat juvenile delinquency and rehabilitate ex-offenders.
 - (6) Relief for the sick, diseased, and terminally ill and their physical well-being.
 - (7) Funds for emergency relief and volunteer services.
 - (8) Funds to nonprofit nursing homes and other nonprofit medical facilities.
 - (9) Social services and education programs aimed at aiding emotionally and physically distressed, handicapped, elderly, and underprivileged persons.

- (10) Funds for crime prevention, fire protection and prevention, and public safety.
 - (11) Funds to relieve, improve, and advance the physical and mental conditions, care and medical treatment, health and economic interests of injured or disabled veterans.
- e. Uses that are fraternal related which include disbursements for:
- (1) Fraternal uses, consistent with uses enumerated in subdivisions a through m, specified by an organization's constitution, charter, articles of incorporation, or bylaws and not of direct benefit to the eligible organization.
 - (2) Fraternal uses or disbursements to perpetuate the memory and history of the dead.
- f. Uses increasing comprehension of and devotion to the principles upon which the nation was founded, not of direct benefit to the eligible organization or any member thereof which include disbursements to aid in teaching the principles of liberty, truth, justice, and equality. However, beauty pageants are excluded from receiving net proceeds.
- g. The erection or maintenance of public buildings or works, public utilities, or public waterworks.
- h. Uses otherwise lessening the burden of government which include disbursements to any entity that is normally funded by the city, county, state, or United States government and disbursements directly to a city, county, state, or the United States government, or any agency, political subdivision, or instrumentality thereof.
- i. Uses benefiting a definite number of persons who are the victims of loss of home or household possessions through explosion, fire, flood, or storm and the losses uncompensated by insurance.
- j. Uses benefiting a definite number of persons suffering from a seriously disabling disease or injury causing severe loss of income or incurring extraordinary medical expense which is uncompensated by insurance.
- k. Uses, for community service projects, by chambers of commerce exempt from federal income tax under section 501(c)(6) of the Internal Revenue Code. A project qualifies as a community service project if it promotes the common good, enhances the social welfare of the community, and benefits an indefinite number of persons. The specific goals of a community service project may be to develop or promote public services in areas such as education, housing, transportation, recreation, crime prevention, fire protection and prevention, safety, and health. Uses that directly benefit a chamber of commerce do not qualify.
- l. Uses for or of benefit to efforts in support of the health, comfort, or well-being of the community which include disbursements to provide:

- (1) Funds for adult bands, including drum and bugle corps.
 - (2) Funds for trade shows and conventions conducted in this state.
 - (3) Funds for nonprofit organizations that operate a humane society, zoo, or fish or wildlife propagation and habitat enhancement program.
 - (4) Funds for public transportation and recreation.
 - (5) Funds for preservation and cleanup of the environment.
- m. To the extent net proceeds are used toward the primary purpose of a charitable, educational, religious, public safety, or public-spirited organization, that has obtained a final determination from the internal revenue service as qualifying for exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code, the organization may establish a special trust fund as a contingency for funding or maintaining the organization's future program services should the organization discontinue conducting games or dissolve.

Such uses do not include the erection, acquisition, improvement, maintenance, or repair of real, personal, or mixed property owned or leased by an organization unless it is used exclusively for one or more eligible uses. Except for uses related to an eligible organization's primary purpose, eligible uses do not include any activities consisting of attempts to influence legislation or promote or oppose referendums or initiatives. Eligible uses do not include participation in any political campaign on behalf of any active official or person who is or has been a candidate for public office.

7. 5. "Educational organization" means any nonprofit public or private elementary or secondary school, two-year or four-year college, or university in this state which has been active for the two immediately preceding years.
8. 6. "Eligible organization" means veterans, charitable, educational, religious, fraternal, civic and service, public safety, ~~and~~ or public-spirited organizations, which organization domiciled in North Dakota and which may be licensed issued a license by the attorney general or issued a local permit by the governing body of a city or county to conduct games.
9. 7. "Fraternal organization" means an organization, except a college or high school fraternity, which is incorporated as a nonprofit corporation and which is a branch, lodge, or chapter of a national or state organization and exists for the common business, brotherhood, or other interests of its members. The organization must have been actively fulfilling its primary purpose within this state for the two immediately preceding years, and must have obtained an advance ruling or final determination from the internal revenue service as qualifying for exemption from federal income tax under section 501(c)(8) or 501(c)(10) of the Internal Revenue Code. However, if the organization's gross receipts in each tax year are normally not more than twenty-five thousand dollars, the organization is

not required to have obtained an advance ruling or final determination from the internal revenue service.

40. 8. "Games" means games of chance.
41. 9. "Gross proceeds" means all ~~moneys collected or~~ cash and checks received from conducting games, sales tax on bingo cards, and ~~from~~ admissions.
42. 10. "Licensed organization" means an eligible organization licensed by the attorney general ~~to conduct bingo, raffles, calcuttas, pull tabs, punchboards, twenty-one, poker, paddlewheels, and sports pools.~~
43. 11. "Local permit" means a permit issued to a nonprofit organization ~~recognized as a public-spirited organization by a governing body of a city or county that authorizes the organization to conduct only bingo, raffles, and sports pools in that city or county.~~
44. 12. "Manufacturer" means a person who designs, assembles, fabricates, produces, or constructs; ~~or who otherwise prepares a product or a component part of a product of any equipment usable in~~ designed for the lawful conduct of games. For a pull tab and bingo card dispensing device, a manufacturer is the person who owns the rights to the proprietary ~~operating~~ software.
45. "Manufacturer's distributor" means a wholesaler of a manufacturer of ~~pull tab dispensing devices who sells at wholesale dispensing devices and associated equipment directly to a licensed distributor and who does not sell or otherwise provide these items to an eligible organization.~~
46. "Member" means a person who has qualified for and been admitted to membership in an eligible organization pursuant to its bylaws, articles of incorporation, charter, rules, or other written statement, and who pays regular monthly, annual, or other periodic dues or is a fully paid life member. "Member" includes a member of an auxiliary organization, but excludes a social member.
47. 13. "Net proceeds" means adjusted gross proceeds less allowable expenses and ~~the~~ gaming tax.
48. 14. "Person" means any person, ~~firm~~, partnership, corporation, limited liability company, association, or organization.
49. 15. "Public safety organization" means an organization incorporated as a nonprofit corporation whose primary purpose is to ~~actively engage in~~ provide firefighting, ambulance service, crime prevention, or similar ~~disaster~~ emergency assistance, which has been actively fulfilling its primary purpose within this state for the two immediately preceding years.
20. 16. "Public-spirited organization" means an organization incorporated as a nonprofit corporation whose primary purpose is for scientific research, amateur sports competition, safety, arts, agriculture, preservation of cultural heritage, educational activities, educational public service, youth, economic development, tourism, community recreation, or similar organization, ~~and~~ which does not meet the definition of veterans,

fraternal, charitable, educational, religious, civic and service, or public safety organization, and which has been actively fulfilling its primary purpose within this state for the two immediately preceding years. However, a nonprofit organization recognized as a public-spirited organization by a governing body of a city or county for obtaining a local permit does not need to meet this definition.

24. 17. "Religious organization" means a nonprofit organization, church, body of communicants, or group gathered in common membership incorporated as a nonprofit corporation whose primary purpose is for advancement of religion, mutual support and edification in piety, worship, and religious observances which has been actively gathered or united in this state for the two immediately preceding years.
22. 18. "Veterans organization" means any congressionally chartered organization within this state, or any branch or lodge or chapter of a nonprofit national or state organization ~~within this state, the whose~~ membership ~~of which~~ consists of individuals who were members of the armed services or forces of the United States. ~~The~~ An organization must have been actively fulfilling its primary purpose in this state for the two immediately preceding years and must have obtained an advance ruling or final determination from the internal revenue service as qualifying for exemption from federal income tax under section 501(c)(19) of the Internal Revenue Code. ~~However, if the organization's gross receipts in each tax year are normally not more than twenty-five thousand dollars, the organization is not required to have obtained an advance ruling or final determination from the internal revenue service.~~

SECTION 4. AMENDMENT. Section 53-06.1-01.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-01.1. Gaming commission - Members - Appointment - Term - Qualifications - Compensation.

1. The state gaming commission consists of the chairman and four other members appointed by the governor, with the consent of the senate. The members serve three-year terms and until a successor is appointed and qualified. If the senate is not in session when the term of a member expires, the governor may make an interim appointment, and the interim appointee holds office until the senate confirms or rejects the appointment. A member appointed to fill a vacancy arising from other than the natural expiration of a term serves only for the unexpired portion of the term. The terms of the commissioners must be staggered so that one term expires each July first.
2. A person is ineligible for appointment to the commission if that person has not been a resident of this state for at least two years before the date of appointment. A person is also ineligible if that person is not of such character and reputation as to promote public confidence in the administration of gaming in this state. A person is also ineligible if that person has been convicted of a felony criminal offense or has pled guilty or been found guilty of any violation of chapter 12.1-06, 12.1-08, 12.1-09, 12.1-10, 12.1-11, 12.1-12, 12.1-22, 12.1-23, 12.1-24, 12.1-28, 53-06.1, or 53-06.2, or has pled guilty or been found guilty of any violation of section 6-08-16 or 6-08-16.2, or has pled guilty or been found guilty of any offense or violation that has a direct bearing on the

person's fitness to be involved in gaming, or who has committed an equivalent offense or violation of the laws of another state or of the United States. A person who has a financial interest in gaming cannot be a member or employee of the commission and cannot be employed by the commission. For the purpose of this subsection, a financial interest includes the receiving of any direct payment from an eligible organization for property, services, or facilities provided to that organization. Failure to maintain compliance with this subsection is grounds for removal from the commission or from employment with the commission.

3. Commission members are entitled to forty dollars per day for compensation for each day spent on commission duties, and mileage and expense reimbursement as allowed to other state employees.
4. The attorney general shall represent the state in all hearings before the commission. The commission may employ private counsel.
5. The commission shall adopt rules in accordance with chapter 28-32, to administer and regulate the gaming industry, including methods of conduct, play, and promotion of games; minimum procedures and standards for recordkeeping and internal control; requiring tax returns and reports from organizations or distributors; methods of competition and doing business by distributors and manufacturers; acquisition and use of gaming equipment; quality standards for the manufacture of pull tabs, paper bingo cards, and pull tab and bingo card dispensing devices; to ensure that net proceeds are disbursed to educational, charitable, patriotic, fraternal, religious, or public-spirited uses; to protect and promote the public interest; to ensure fair and honest games; to ensure that fees and taxes are paid; and to prevent and detect unlawful gambling activity.

SECTION 5. AMENDMENT. Section 53-06.1-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-03. City and county local permits and Local permits, site authorizations - Licensure by attorney general - Fees - Suspension authorization, and revocation licenses.

1. ~~A nonprofit~~ An organization that has its license suspended or revoked, or has relinquished its license and not disbursed its net proceeds is ineligible for a local permit. An organization shall obtain apply for a local permit as follows:
 - a. A nonprofit organization recognized as a public-spirited organization by the governing body of a city or county may apply for a local permit to conduct only raffles ~~or~~ bingo, or sports pools in which ~~the~~ a primary prize does not exceed one thousand dollars, and the ~~aggregate total prizes of all games do not exceed six thousand dollars annually, and to conduct sports pools for professional sports only per year.~~ The determination of what is a "public-spirited organization" is within the sole discretion of the governing body which should in its determination consider the definition of a public-spirited organization under section 53-06.1-01 and eligible uses of net proceeds under section 53-06.1-11.1. A governing body may issue a local permit for these the games to be

held at designated times and places. ~~If the nonprofit organization is a North Dakota college or university fraternity or sorority, the organization shall include a signed acknowledgement by the administration of the college or university that the applicant is a recognized fraternity or sorority.~~

- b. An eligible organization shall apply to the governing body of the city or county in which the site where the gaming activity to be conducted is located. Application for a local permit must be made on a form prescribed by the attorney general. If the nonprofit organization is a North Dakota college or university fraternity, sorority, or club, the organization shall provide a signed acknowledgment by the administration of the college or university that the applicant is a recognized fraternity, sorority, or club. Approval may be granted at the discretion of the governing body. A governing body may establish a fee not to exceed twenty-five dollars for each local permit. A local permit must be on a fiscal year basis from July first to June thirtieth or on a calendar-year basis.
 - e. ~~For purposes of issuing a local permit, the determination of what is a "public-spirited organization" is within the sole discretion of the governing body of the city or county.~~
2. An eligible organization shall apply for a license to conduct games only bingo, raffles, calcuttas, pull tabs, punchboards, twenty-one, paddlewheels, poker, or sports pools by:
 - a. First securing approval for a site authorization from the governing body of the city or county in which the proposed site is located. Approval, which may be granted at the discretion of the governing body, must be recorded on a site authorization form that is to accompany the license application to the attorney general for final approval. A governing body ~~of a city or county~~ may not require an eligible organization to donate net proceeds ~~directly~~ to the city, county, or related political subdivision or for community programs or services within the city or county as a condition for receiving a site authorization from the city or county. A governing body may limit the number of tables for twenty-one per site and the number of sites upon which a licensed organization may conduct games within the city or county. A governing body may charge a one hundred dollar fee for a site authorization; and
 - b. Annually applying for a license from the attorney general before July first on a form prescribed by the attorney general and including with the application a one hundred fifty dollar license fee. An organization shall sufficiently document that it qualifies as an eligible organization. If a licensed organization amends its primary purpose as stated in its articles of incorporation or changes its basic character in a material manner, the organization shall reapply for licensure.
 3. ~~The attorney general shall license eligible organizations that conform to the requirements of this chapter.~~

4. A licensed organization may conduct games only on an authorized site as follows:
 - a. Only one licensed organization or organization that has a local permit at a time may conduct games at an authorized site, except that a raffle may be conducted for a special occasion by a second ~~organization that is a licensed organization~~ or organization that has a local permit when one of these conditions is met:
 - (1) When the area for the raffle is physically separated from the area where games are conducted by the regular licensee.
 - (2) Upon request of the regular licensee and with the approval of the alcoholic beverage establishment, the licensee's license is suspended for that specific time of day by the attorney general.
 - b. ~~After June 30, 1995~~ Except for a temporary site authorized for fourteen or fewer consecutive days for not more than two events per quarter, a licensed organization or closely connected licensed organizations as a unit may not have more than twenty-five sites unless granted a waiver by the attorney general. If the attorney general finds that there is no other licensed organization willing to conduct interested in conducting gaming at a site for which a waiver is being sought, the attorney general may approve the waiver. The attorney general may not grant a licensed organization a waiver for no more than five sites. Only one of two or more closely connected organizations may have a license at one time. Closely connected licensed organizations are two or more organizations which have an interdependent relationship, based on the presence and degree of unitary attributes that. These attributes may include common primary purposes, members on boards of directors, officers, management, employees, bookkeepers administrative and operating services, membership, program services, integrations of gaming activities, and shared facilities.
 - c. Games of pull tabs, punchboards, twenty-one, paddlewheels, and sports pools may be conducted only during the hours when alcoholic beverages may be dispensed according to applicable regulations of the state, county, or city.
 - d. An organization may not permit a person under twenty-one years of age to directly or indirectly play pull tabs, punchboards, twenty-one, calcuttas, sports pools, paddlewheels, or poker. An organization may not permit a person under eighteen years of age to directly or indirectly play bingo unless the person is accompanied by an adult, bingo is conducted by an organization that has a local permit, or the game's prize structure does not exceed that allowed for a local permit.
4. A local permit, site authorization, and license must contain information prescribed by the attorney general or local governing body and must be displayed at a site.
5. ~~The attorney general may, based on reasonable ground or upon written complaint, suspend, deny, or revoke under chapter 28-32, any license~~

granted under this chapter for violations by the licensee, or any officer, director, agent, member, or employee of the licensee, of this chapter or any gaming rule. Notwithstanding section 5-02-02, an eligible organization that possesses a license issued under chapter 5-02 may not have that license suspended, revoked, or denied in consequence of action taken under this subsection unless that organization conducts gaming that violates chapter 12-1-28 or subsection 4 of section 53-06.1-07. The attorney general shall license an eligible organization that complies with this chapter and may issue a conditional license to an eligible organization whose regularly issued license has expired or been suspended, revoked, or relinquished. The attorney general shall designate the time period for which the conditional license is valid and may impose any conditions.

6. The attorney general may impose monetary fines on licensed organizations, distributors, manufacturers' distributors, and manufacturers for failure to comply with this chapter or any gaming rule. The monetary fine for each violation by an organization is a minimum of twenty five dollars and may not exceed two percent of the organization's average quarterly gross proceeds, or five thousand dollars, whichever is greater. The monetary fine for each violation by a distributor or manufacturer's distributor is a minimum of one hundred dollars and may not exceed five thousand dollars. The monetary fine for each violation by a manufacturer is a minimum of five hundred dollars and may not exceed two hundred fifty thousand dollars. This fine may be in addition to or in lieu of a license suspension or revocation. A governing body or local law enforcement official may inspect a site's gaming equipment, and examine or cause to be examined the books and records of a licensed organization or organization that has a local permit to the extent that the books and records relate to any transaction involving the direct or indirect conduct of games.

SECTION 6. AMENDMENT. Section 53-06.1-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-06. Persons permitted to conduct games - Site - Equipment - Compensation.

1. No person, except a member or, an employee of a licensed organization or an organization that has a local permit, or an employee of a temporary employment agency who provides services to a licensed organization, may assist in conducting conduct any game. "Member" includes a member of an auxiliary organization. In conducting pull tabs or bingo through a dispensing device, the attorney general may allow an employee of an alcoholic beverage establishment to provide limited assistance to organizations an organization. However, a volunteer of an eligible organization may sell raffle tickets.
2. Except when authorized by the attorney general or allowed by the gaming rules, no game may be conducted with gaming equipment other than equipment owned by, loaned to, or rented at a reasonable rate by an eligible organization from an eligible organization or shall procure gaming equipment only from a licensed distributor. No equipment or prizes may be purchased at an excessive price.

3. An organization shall maintain complete, accurate, and legible accounting records in North Dakota for all gaming activity and establish an adequate system of internal control. The governing board of an eligible organization is primarily responsible and may be held accountable for the proper determination and distribution of net proceeds.
4. ~~The site where any game is being conducted, or where it is intended that the game will be held, must be open to inspection by the attorney general and local law enforcement officials.~~
5. ~~The value of a merchandise prize awarded in a game is its current retail price.~~
6. ~~Equipment, prizes, and supplies for games may not be purchased or sold at excessive prices.~~
7. 5. A person is restricted from being involved in gaming and the attorney general shall conduct criminal history ~~background checks~~ record check as follows:
 - a. A person who has pled guilty to or been found guilty of a felony offense as defined by the laws of this state, other states, or the federal government, or has pled guilty to or been found guilty of a violation of this chapter, a gaming rule, chapters 12.1-28 or 53-06.2, or offenses of other states or the federal government equivalent to offenses defined in these chapters may not be a licensed distributor, may not be employed by a licensed distributor to sell or distribute gaming equipment, and may not be employed by a licensed organization to conduct games on a site for five years from the date of conviction, release from incarceration, or expiration of parole or probation, whichever is the latest.
 - b. A person who has pled guilty to or been found guilty of a misdemeanor offense in violation of section ~~6-08-16.4~~ 6-08-16.2 or chapters 12.1-06, 12.1-23, or 12.1-24 or offenses of other states, the federal government, or a municipality equivalent to these offenses may not be a licensed distributor, may not be employed by a licensed distributor to sell or distribute gaming equipment, and may not be employed by a licensed organization to conduct games on a site for two years from the date of conviction, release from incarceration, or expiration of parole or probation, whichever is the latest.
 - c. The attorney general shall conduct a criminal history ~~background~~ record check of each potential employee of a licensed organization and charge a fee of twenty dollars per record check in accord with section 12-60-16.9. ~~In addition, the~~ The fee may be waived in part or in whole by the attorney general if a federal agency or local law enforcement agency has done a record check. The attorney general may require payment of any additional fee necessary to defray the actual cost of a background check of a person for whom adequate background information sources are not readily available, including a person who has not resided in North Dakota for the previous ~~one~~ five years. The attorney general may require payment of the estimated additional fee in advance as a condition precedent to

beginning the background check. The attorney general shall notify the person when a determination is made that an additional fee is necessary and shall notify the person of the best estimate of the amount of the additional fee. In lieu of paying the additional cost, a person may cancel the background check. The estimated cost must be placed in the attorney general's refund fund for use to defray the actual expenses of the background check. The remainder of the funds must be returned to the person within thirty days of the conclusion of the background check. The attorney general shall notify the organization ~~or~~ and the person; ~~or both~~, of the result of the background check. The attorney general shall hold the information confidential except in the proper administration of this chapter or any gaming rule, or to an authorized law enforcement agency.

- ~~8. The attorney general may prohibit a person from playing games if the person violates this chapter, chapters 42.1-28 or 53-06.2, or a gaming rule.~~
- ~~9. The attorney general may require a licensed organization to pay a bingo or raffle prize to a player based on a factual determination or a hearing by the attorney general.~~
40. ~~6.~~ If bingo is the primary game at a site, a licensed organization may not pay bingo prizes in which the aggregate of the total bingo prizes ~~for a quarter~~ exceeds the total bingo gross proceeds for ~~the quarter at that site~~ a period prescribed by gaming rule. However, a bingo prize that equals or exceeds ten thousand dollars is excluded from the ~~computation of the aggregate total~~ of the bingo prizes.
- ~~11. An organization shall disburse net proceeds within the period prescribed by rule.~~
7. A city or county may require a person conducting games to obtain a local work permit, charge a fee, and conduct a criminal history record check. A fee may not exceed the actual expense of processing an application.

SECTION 7. AMENDMENT. Section 53-06.1-07.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-07.2. Poker. A licensed organization may conduct poker on not more than two occasions per year ~~as follows:~~

- ~~1. The~~ An organization may supply the dealer.
- ~~2.~~ The maximum single bet is one dollar.
- ~~3.~~ Not more than three raises, of not more than one dollar each, may be made among all the players in each round of bets. Otherwise the normal rules of poker apply.
- ~~4. The~~ An organization shall assess each player a fee not to exceed two dollars per one-half hour of playing time, collected in advance. A fee may be charged each player for entry into a tournament for prizes ~~which~~

and this fee may be in ~~lieu~~ place of or in addition to the fee assessable at one-half hour intervals.

SECTION 8. AMENDMENT. Section 53-06.1-07.3 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-07.3. Calcuttas. ~~A licensed organization may conduct a calcutta~~ may only be conducted for a professional or amateur sporting ~~events~~ event held in this state, but not for elementary, secondary, or postsecondary education sports events. ~~The~~ An organization shall post at the site all rules affecting the conduct and play of calcuttas. ~~The~~ An organization may not have an interest in the outcome of the calcutta. A player must place a wager in the calcutta auction pool at the site. No more than one wager per competitor may be allowed in any calcutta pool. ~~The amounts paid to calcutta pool players in~~ amount of prizes may not exceed ninety percent of the gross proceeds. A player may not place a wager on a competitor in a calcutta pool may not be under sporting event unless the competitor is eighteen years of age or older.

SECTION 9. AMENDMENT. Section 53-06.1-07.4 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-07.4. Paddlewheels. ~~A licensed~~ An organization shall post at the site ~~all rules affecting the conduct of relating to~~ relating to paddlewheels ~~and requirements of players.~~ A paddlewheel is a mechanical vertical wheel marked off into equally spaced sections that contain numbers or symbols, and which after being spun, uses a pointer ~~or marker~~ to indicate the winning number or symbol. The maximum price per ~~paddlewheel ticket may not exceed~~ wager is two dollars. No money may be ~~allowed~~ used to bet on the playing table. A table must be used to register a player's ~~wagered paddlewheel ticket~~ wager when a cash prize is a variable multiple of the ~~price of the paddlewheel ticket~~ wager. A paddlewheel ticket must be used to register a player's wager when a prize is not a variable multiple of the wager. ~~No~~ A player may ~~not~~ place paddlewheel tickets wagers valued at more than twenty dollars on each spin of the paddlewheel. Cash, chips, or merchandise prizes may be awarded. No single cash prize, value of chips, or the ~~current~~ retail price value of the merchandise prize to be awarded for a winning ~~paddlewheel ticket~~ wager may exceed one hundred dollars. ~~The monthly rent for each paddlewheel playing table may not exceed the amount authorized by law for a twenty-one table.~~

SECTION 10. AMENDMENT. Section 53-06.1-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-08. Punchboards and pull tabs. Unless all of the top tier winning pull tabs or punchboard punches of a game have been redeemed, or unless otherwise permitted by a gaming rule or the attorney general, a person or organization ~~conducting pull tabs or punchboards~~ may not close the game after ~~the game~~ it has been placed in play. The maximum sales price per pull tab and punchboard punch is two dollars. The maximum prize value of ~~the~~ a top tier winning pull tab or punchboard punch is five hundred dollars. The game of pull tabs may only be conducted by commingling deals.

SECTION 11. AMENDMENT. Section 53-06.1-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-09. Sports pools. ~~A licensed organization or organization that has a local permit may conduct a sports pool~~ must be for a professional sports sport only.

The maximum wager on a sports pool is five dollars. The amount of prizes may not exceed ninety percent of the gross proceeds.

SECTION 12. AMENDMENT. Section 53-06.1-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-10. Twenty-one. ~~A licensed organization may conduct and shall control the playing of twenty-one on its site.~~ No money may be allowed on the table as a wager. The organization shall provide playing chips of various denominations to players. Chips must be redeemed by the organization for their full value. The maximum limit per wager may be set by the organization at not more than five dollars and wagers in increments of one dollar must be accepted up to the maximum limit. A player may not play more than two hands at the same time. Only the player actually playing a hand may place a wager on any hand. Each player plays the player's hand against the dealer's hand. ~~In order to~~ To remain in the hand being dealt, neither the player nor the dealer may play a hand with a count greater than twenty-one. A count of twenty-one obtained with two cards is ~~termed~~ a natural twenty-one and is an automatic payout except in ~~case of~~ a tie count with the dealer. Players may double down on a natural twenty-one. For a tie count between the player and the dealer, no winner is declared and the player keeps the player's wager. An organization may allow pooling of tips received by dealers at a site. Any requirement to pool tips is within the sole discretion of each organization ~~and may not be imposed or encouraged by the attorney general or commission.~~ An organization ~~conducting twenty-one shall conspicuously post rules relating to the conduct of the game twenty-one.~~ Except for ~~an organization's a~~ a site that has twenty-one gross proceeds averaging less than ten thousand dollars per quarter, ~~no~~ an organization may not conduct twenty-one at ~~an authorized~~ the site with wagers exceeding two dollars unless the organization has first installed video surveillance equipment as required by rules and the equipment is approved by the attorney general.

SECTION 13. AMENDMENT. Section 53-06.1-10.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-10.1. Raffles. Prizes ~~A prize~~ for a raffle may ~~include any property which may be legally owned and possessed~~ cash or merchandise, but may not include be real estate. ~~Cash prizes may be awarded in a raffle provided the value of~~ No single cash prize exceeds ~~may exceed~~ one thousand dollars and ~~provided that~~ the total cash prizes ~~do~~ in one day may not exceed three thousand dollars ~~in one day.~~

SECTION 14. AMENDMENT. Section 53-06.1-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-11. Gross proceeds - ~~Expenses~~ Allowable expenses - Rent limits.

1. All ~~moneys collected or~~ money received from games; ~~except cash prizes of one hundred dollars or less paid immediately;~~ must be deposited in a special account of the licensed organization. ~~Cash prizes of an amount to be determined by the attorney general and accounted for according to the gaming rules.~~ Gaming activity for a quarter must be reported on a tax return form prescribed by the attorney general. ~~The purchase prices~~ price of a merchandise prizes prize must be ~~withdrawn~~ paid from ~~this a~~ a gaming bank account by ~~consecutively numbered checks~~ consecutively numbered checks duly signed by a specified officer or officers of the organization and payable to a

- ~~specific person or organization. There must also be written on the check the nature of the prize check. No check drawn from a gaming or trust bank account may be drawn payable to "cash" or a fictitious payee. If a cash prize that exceeds one hundred dollars, the prize may also an amount set by rule must be issued by an accountable accounted for by a receipt or nonnegotiable instrument approved prescribed by the attorney general gaming rules.~~
- ~~2. No part of net proceeds after they have been devoted to an eligible use recipient may be used by the donee to pay any person for services rendered or materials purchased in connection with the conduct of games by the donor organization.~~
 - ~~3. Subject to the limitations of this subsection, Allowable expenses incurred for games may be deducted from adjusted gross proceeds, to the extent that total expenses for games do not exceed. The allowable expense limit is fifty percent of the first two hundred thousand dollars of adjusted gross proceeds per quarter and forty-five percent of the adjusted gross proceeds in excess of two hundred thousand dollars per quarter. In addition, an organization may deduct as an allowable expense:
 - ~~a. Two and one-half percent of the gross proceeds of pull tabs.~~
 - ~~b. Capital expenditures for security or video surveillance equipment used for controlling games if the equipment is required by section 53-06.1-10 or authorized by rule, and it is approved by the attorney general.~~~~
 - ~~3. Cash shorts incurred in games and interest and penalty are classified as expenses toward the expense limitation. Notwithstanding the limitations of this subsection, in addition to expenses allowed to be deducted from adjusted gross proceeds, a licensed organization may deduct as an expense capital expenditures for security or video surveillance equipment used for controlling games if the equipment is required by section 53-06.1-10 or gaming rules and the equipment is approved by the attorney general. This subsection does not authorize violations of the rent limitations.~~
 - ~~4. In addition to the expense limitation provided in subsection 3, an organization that conducts the game of pull tabs at an authorized site may deduct as an expense two and one-half percent of the gross proceeds for this game of chance. For a site where bingo is conducted:
 - ~~a. Except under subdivision c, if bingo is the primary game, the monthly rent must be reasonable.~~
 - ~~b. If bingo is not the primary game, but is conducted with twenty-one, paddlewheels, or pull tabs, no additional rent is allowed.~~
 - ~~c. If bingo is conducted through a dispensing device and no other game is conducted, the monthly rent may not exceed two hundred twenty-five dollars.~~~~
 - ~~5. For a site where bingo is not the primary game:~~

- a. If twenty-one or paddlewheels is conducted, the monthly rent may not exceed two hundred dollars multiplied by the necessary number of tables. If pull tabs is also conducted, the monthly rent for pull tabs may not exceed an additional one hundred twenty-five dollars.
- b. If twenty-one and paddlewheels are not conducted but pull tabs is conducted, the monthly rent may not exceed two hundred twenty-five dollars.

SECTION 15. AMENDMENT. Section 53-06.1-11.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-11.1. ~~Eligible organizations not to Restricted use any of money in certain political activities - Penalty~~ Eligible uses of net proceeds.

1. An eligible A licensed organization that derives any revenue from games it conducts or an organization that has a local permit may not use money from any source for the placing on the ballot of any an initiated or referred measure on a ballot or for any activities consisting of attempts to participate in any a political campaign on behalf of to promote or in opposition to any active official or oppose a person who is or has been a candidate for public office. Except for a use related to an organization's primary purpose, a licensed organization or organization that has a local permit may not use net proceeds to influence legislation or promote or oppose referendums or initiatives. Any funds expended by an eligible organization to promote or oppose an initiated or referred measure that has been placed is on the ballot or for any activities that qualify as activities of a lobbyist under section 54-05.1-02, that are not compensation or expenses paid to a lobbyist, and that are not otherwise required to be reported under section 54-05.1-03 must be reported to the attorney general as prescribed by the attorney general. An eligible organization that violates A violation of this section is subject subjects an organization to a suspension of its license to conduct games or local permit for up to one year.
2. A licensed organization shall disburse net proceeds within the period prescribed by rule and for only these educational, charitable, patriotic, fraternal, religious, or public-spirited uses:
 - a. Uses for stimulating and promoting state and community-based economic development programs within the state which improve the quality of life of community residents.
 - b. Uses for developing, promoting, and supporting tourism within a city, county, or the state.
 - c. Uses benefiting an indefinite number of persons by bringing them under the influence of education, cultural programs, or religion which include disbursements to provide:
 - (1) Scholarships for students, if the disbursement is deposited in a scholarship fund for defraying the cost of education to students and the scholarships are awarded through an open and fair selection process.

- (2) Supplementary assistance to a public or private nonprofit educational institution registered with or accredited by any state.
 - (3) Assistance to libraries and museums.
 - (4) Assistance for the performing arts and humanities.
 - (5) Preservation of cultural heritage.
 - (6) Youth community and athletic activities.
 - (7) Adult amateur athletic activities within the state, such as softball, including uniforms and equipment.
 - (8) Maintenance of places of public worship or support of a body of communicants, gathered in common membership for mutual support and edification in piety, worship, or religious observances.
 - (9) Scientific research.
- d. Uses benefiting an indefinite number of persons by relieving them of disease, suffering, or constraint which include disbursements to provide:
- (1) Relief to an individual or family suffering from poverty or homelessness.
 - (2) Encouragement and enhancement of the active participation of the elderly in our society.
 - (3) Services to the abused.
 - (4) Services to persons with an addicted behavior toward alcohol, gambling, or drugs.
 - (5) Funds to combat juvenile delinquency and rehabilitate ex-offenders.
 - (6) Relief for the sick, diseased, and terminally ill and their physical well-being.
 - (7) Funds for emergency relief and volunteer services.
 - (8) Funds to nonprofit nursing homes and nonprofit medical facilities.
 - (9) Social services and education programs aimed at aiding emotionally and physically distressed, handicapped, elderly, and underprivileged persons.
 - (10) Funds for crime prevention, fire protection and prevention, and public safety.

- (11) Funds to relieve, improve, and advance the physical and mental conditions, care and medical treatment, and health and welfare of injured or disabled veterans.
- e. Uses that perpetuate the memory and history of the dead.
- f. Uses increasing comprehension of and devotion to the principles upon which the nation was founded, not of direct benefit to the eligible organization or any member thereof which include disbursements to aid in teaching the principles of liberty, truth, justice, and equality. However, beauty pageants do not qualify.
- g. The erection or maintenance of public buildings, utilities, or waterworks.
- h. Uses lessening the burden of government which include disbursements to an entity that is normally funded by a city, county, state, or United States government and disbursements directly to a government entity or its agency.
- i. Uses benefiting a definite number of persons who are the victims of loss of home or household possessions through explosion, fire, flood, or storm and the loss is not covered by insurance.
- j. Uses benefiting a definite number of persons suffering from a seriously disabling disease or injury causing severe loss of income or incurring extraordinary medical expense which is not covered by insurance.
- k. Uses, for community service projects, by chambers of commerce exempt from federal income tax under section 501(c)(6) of the Internal Revenue Code. A project qualifies if it develops or promotes public services, including education, housing, transportation, recreation, crime prevention, fire protection and prevention, safety, tourism, and health. Uses that directly benefit a chamber of commerce do not qualify.
- l. Uses for or of benefit to efforts in support of the health, comfort, or well-being of the community which include disbursements to provide:
- (1) Funds for adult bands, including drum and bugle corps.
 - (2) Funds for trade shows and conventions conducted in this state.
 - (3) Funds for nonprofit organizations that operate a humane society, zoo, or fish or wildlife propagation and habitat enhancement program.
 - (4) Funds for public transportation, community celebration, and recreation.
 - (5) Funds for preservation and cleanup of the environment.

- m. To the extent net proceeds are used toward the primary purpose of a charitable, educational, religious, public safety, or public-spirited organization, that has obtained a final determination from the internal revenue service as qualifying for exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code, the organization may establish a special trust fund as a contingency for funding or maintaining the organization's future program services should the organization discontinue conducting games or dissolve.
3. The uses in subsection 2 do not include the erection, acquisition, improvement, maintenance, or repair of real or personal property owned or leased by an organization unless it is used exclusively for an eligible use. No part of net proceeds after they have been disbursed to an eligible use recipient may be used by the donee to pay any person for services rendered or materials purchased in connection with the conduct of games by the donor organization.

SECTION 16. AMENDMENT. Section 53-06.1-12 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-12. Gaming ~~tax~~ and excise taxes - Deposits.

1. A gaming tax as provided in this section upon is imposed on the total adjusted gross proceeds received earned by a licensed organization in a quarter and it must be computed and paid to the attorney general on a quarterly basis upon on the tax return forms as prescribed by the attorney general. The amount of this This tax must be paid from adjusted gross proceeds and may is not be charged against part of the percentage limitation of allowable expenses. The tax is hereby imposed upon every licensed organization, to be levied, collected, and paid quarterly, computed at the following rates are:
4. a. On adjusted gross proceeds not in excess of exceeding two hundred thousand dollars per quarter, a tax of five percent.
2. b. On adjusted gross proceeds in excess of exceeding two hundred thousand dollars per quarter but not in excess of exceeding four hundred thousand dollars per quarter, a tax of ten percent.
3. c. On adjusted gross proceeds in excess of exceeding four hundred thousand dollars per quarter but not in excess of exceeding six hundred thousand dollars per quarter, a tax of fifteen percent.
4. d. On adjusted gross proceeds in excess of exceeding six hundred thousand dollars per quarter, a tax of twenty percent.
2. In addition to any other tax provided by law and in place of sales or use taxes, there is imposed an excise tax of four and one-half percent on the gross proceeds from the sale at retail of pull tabs to a final user. This includes pull tabs provided to a player in exchange for redeemed winning pull tabs. The tax must be paid to the attorney general when tax returns are filed.

3. The state treasurer shall deposit gaming and excise taxes, monetary fines, and interest and penalties collected in the general fund in the state treasury.

SECTION 17. AMENDMENT. Section 53-06.1-12.3 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-12.3. Interest and penalty. ~~Notwithstanding any other provision of this chapter, the~~ The attorney general shall assess a licensed organization interest and penalty as follows:

1. Assessment of interest.
 - a. ~~An~~ If an organization that requests and is granted an extension of time for filing a does not pay tax return due by the original date of a tax return, or if additional tax is due based on an audit or math verification of the return and it is not paid by the original due date of the return, the organization shall pay, with the tax, interest on the tax at the rate of twelve percent per annum computed from the original due date of the ~~tax~~ return through the date the tax is paid.
 - b. ~~If additional tax is due based on an audit or a mathematical verification of a tax return, an organization shall pay interest at the rate of one percent of the additional tax for each month or fraction of a month during which the tax remains unpaid, computed from the due date of the tax return to the date paid.~~
2. Assessment of penalty.
 - a. ~~If an organization, without intent to evade any tax imposed by this chapter, fails to~~ does not pay the tax due on a tax return, filed on or before by the due date original or extended due date of the return, or if additional tax is due based on an audit or math verification of the return and it is not paid by the original or extended due date of the return, the organization shall pay a penalty of five percent of the tax ~~due~~, or twenty-five dollars, whichever is greater.
 - b. ~~If an organization, without intent to evade any tax imposed by this chapter, fails to~~ does not file a tax return on or before by the due date original or extended due date of the return, the organization shall pay a penalty of five percent of the tax ~~due~~, or twenty-five dollars, whichever is greater, ~~if the failure is for not more than one~~ each month; ~~counting each~~ or fraction of a month as an entire month, ~~with an additional five percent for each additional month or fraction thereof during which the failure continues~~ return is not filed, not exceeding a total of twenty-five percent in the aggregate.
 - c. ~~If additional tax is due based on an audit or mathematical verification of a tax return, an organization shall pay a penalty as prescribed in subdivision a or b.~~
3. ~~If an organization fails to pay any tax, interest, or penalty imposed by this chapter, the attorney general shall~~ may bring court action to collect the tax, interest, and penalty it.

4. The attorney general may for good cause ~~shown~~ waive all or ~~any~~ part of any interest or penalty ~~that was assessed pursuant to this section and~~ may waive any minimal tax.
5. ~~4.~~ If an organization ~~that~~ has failed to file a tax return ~~and~~, and has been notified by the attorney general of the delinquency, and refuses or neglects within thirty days after the notice to file a proper return, the attorney general shall determine the adjusted gross proceeds ~~of the organization and gaming and excise taxes due~~ according to the best information available, and ~~shall~~ assess the ~~tax~~ taxes at not more than double the amount ~~so determined~~. ~~The appropriate interest~~ Interest and penalty also ~~apply~~ must be assessed.
6. Interest and penalty are classified as expenses toward the expense limitation of subsection 3 of section ~~53-06.1-14~~.

³ **SECTION 18. AMENDMENT.** Section 53-06.1-14 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-14. Distributors and manufacturers - ~~Licensure~~.

1. A manufacturer of pull tabs, ~~manufacturer of~~ bingo cards, ~~manufacturer of and or~~ pull tab dispensing devices, ~~manufacturer's distributor of pull tab dispensing devices,~~ and a distributor shall apply annually for a license upon a form prescribed by the attorney general before the first day of April in each year and shall submit the appropriate license fee. ~~Each applicant shall provide such necessary and reasonable information as the attorney general may require.~~ The license fee for a distributor is one thousand five hundred dollars. ~~The license fee for a manufacturer's distributor is five hundred dollars.~~ The license fee for a manufacturer of pull tab dispensing devices, ~~manufacturer of pull tabs, bingo cards, or both a manufacturer of pull tabs and bingo cards,~~ is two thousand dollars.
2. A distributor may not sell, market, or ~~otherwise~~ distribute ~~raffle tickets or gaming equipment for games except to other a licensed distributors distributor, licensed manufacturers' distributors, licensed organizations organization, organizations organization that have has a local permit, or other persons person~~ authorized by the attorney general. A manufacturer of pull tab dispensing devices, pull tabs, or bingo cards may ~~not only~~ sell, market, or ~~otherwise~~ distribute pull tab dispensing devices, pull tabs, or bingo cards, ~~other than~~ to a licensed distributor. A distributor of ~~pull tabs or bingo cards must may~~ purchase or ~~otherwise receive~~ acquire pull tabs or bingo cards only from a licensed manufacturer or licensed distributor. ~~A manufacturer of pull tab dispensing devices may not sell, market, or otherwise distribute pull tab dispensing devices other than to a licensed distributor or a licensed manufacturer's distributor.~~ A licensed distributor and ~~licensed manufacturer's distributor of pull tab dispensing devices~~ may purchase or ~~otherwise receive~~ acquire a new pull tab dispensing devices device

³ Section 53-06.1-14 was also amended by section 6 of House Bill No. 1003, chapter 3.

only from a licensed manufacturer; licensed manufacturer's distributor, or licensed distributor. No gaming equipment or prizes may be sold at an excessive price.

3. ~~An eligible organization shall acquire all raffle tickets or gaming equipment from a licensed distributor, unless the raffle tickets or gaming equipment is printed, manufactured, or constructed by the organization or unless the raffle tickets are obtained from a resident printer who has printed the raffle tickets at the request of the organization. No A licensed distributor shall affix a North Dakota gaming stamp to each deal of pull tabs and bingo cards, punchboard, sports pool board, calcutta board, deal of bingo cards used in a dispensing device, or and series of paddlewheel ticket cards may be sold without a North Dakota gaming stamp being affixed to them. A licensed distributor and shall purchase North Dakota gaming the stamps from the attorney general and the cost for each stamp may not exceed twenty-five cents each.~~
4. ~~A licensed organization or, organization that has a local permit, licensed manufacturer, or North Dakota wholesaler of liquor or alcoholic beverages may not be a distributor. A North Dakota wholesaler of liquor or alcoholic beverages may not be a distributor. A licensed manufacturer may not be a distributor or have any financial interest in a distributor. A distributor may not have any financial interest in a licensed manufacturer.~~
5. ~~The attorney general may, based on reasonable grounds or on written complaint, suspend or revoke an organization's local permit or an organization's, distributor's, manufacturer's distributor, or manufacturer's license for violation, by the organization, distributor, manufacturer's distributor, or manufacturer or any officer, director, agent, member, or employee of the organization, distributor, manufacturer's distributor, or manufacturer, of this chapter or any gaming rule.~~
6. ~~In addition to the basic license fee, the attorney general may require payment of any additional fee necessary to defray the actual cost of a background investigation check of an applicant by following the procedures prescribed by subdivision c of subsection 5 of section 53-06.1-06. The attorney general may require payment of the estimated additional fee in advance. The attorney general shall notify an applicant when it is determined that an additional fee is necessary and the best estimate of the additional fee. An applicant may withdraw the application rather than pay the additional fee. The estimated fee must be placed into the attorney general's refund fund for use to defray the actual expenses. The remainder of the funds must be returned to the applicant within thirty days of concluding the investigation.~~

SECTION 19. AMENDMENT. Section 53-06.1-15.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-15.1. Powers and duties Authority of the attorney general. The attorney general may:

1. ~~Inspect and examine all premises sites in which gaming is conducted or~~ inspect all premises where gaming equipment is manufactured; ~~sold, or~~

distributed. The attorney general may require a licensed manufacturer to reimburse the attorney general for the reasonable actual cost of transportation, lodging, meals, and incidental expenses incurred in inspecting the manufacturer's facility.

2. Inspect all gaming equipment and supplies ~~in, upon,~~ on a site or ~~about~~ the premises.
3. Seize and remove from ~~such a site or~~ premises and impound any gaming equipment, supplies, games, or books and records for the purpose of examination and inspection. When books or records are seized, the attorney general shall provide copies of those records or books within seventy-two hours of a specific request by the organization for a copy of the books or records seized.
4. Demand access to and inspect, examine, photocopy, and audit all books and records of applicants, organizations, lessors, manufacturers, ~~manufacturer's distributors,~~ and distributors, including any affiliated companies on their premises concerning any income or expense resulting from any gaming activity, determine compliance with this chapter or ~~any~~ gaming ~~rule~~ rules, and require verification of income, expense, or ~~devotion~~ use of net proceeds, and all other matters affecting this chapter.
5. ~~Enter into a reciprocal agreement with the commissioner of the internal revenue service of the United States for exchange of information for state tax administration purposes.~~ The attorney general may permit the commissioner or proper representative of the internal revenue service of the United States to inspect a tax return or furnish a copy of the tax return, or information concerning any item contained in the return, or disclosed by any audit or investigation report of the gaming activity of any organization or player, or recordkeeping information. However, information cannot be disclosed to the extent that the attorney general determines that the disclosure would identify a confidential informant or seriously impair any civil or criminal investigation. Except when directed by judicial order, or for pursuing civil or criminal charges regarding a violation of this chapter or a gaming rule, or as is provided by law, the attorney general may not divulge nor make known, to any person, any income or expense item contained in any tax return or disclosed by an audit or investigative report of any taxpayer, provided to the attorney general by the internal revenue service.
6. Require a representative of a licensed organization or distributor to participate in training or for good cause prohibit the person from being involved in gaming as an employee or volunteer. The attorney general may for good cause prohibit a person from providing personal or business services to an organization or distributor.
7. Prohibit a person from playing games if the person violates this chapter, chapter 12.1-28, or 53-06.2, or a gaming rule.
8. Require a licensed organization to pay a bingo or raffle prize to a player based on a factual determination or a hearing by the attorney general.
9. Based on reasonable ground or written complaint, suspend, deny, or revoke an organization's local permit or an organization's, distributor's, or manufacturer's license for violation, by the organization, distributor,

or manufacturer or any officer, director, agent, member, or employee of the organization, distributor, or manufacturer, of this chapter or any gaming rule.

10. Impose a monetary fine on a licensed organization, distributor, or manufacturer for failure to comply with this chapter or any gaming rule. The monetary fine for each violation by an organization is a minimum of twenty-five dollars and may not exceed two percent of the organization's average quarterly gross proceeds, or five thousand dollars, whichever is greater. The monetary fine for each violation by a distributor is a minimum of one hundred dollars and may not exceed five thousand dollars. The monetary fine for each violation by a manufacturer is a minimum of five hundred dollars and may not exceed two hundred fifty thousand dollars. This fine may be in addition to or in place of a license suspension or revocation.
11. At any time within three years after any amount of fees or tax required to be paid pursuant to this chapter becomes due, bring a civil action to collect the amount due. However, if for any reason there is a change in adjusted gross income or tax liability by an amount which is in excess of twenty-five percent of the amount of adjusted gross income or tax liability originally reported on the tax return, any additional tax determined to be due may be assessed within six years after the due date of the tax return, or six years after the tax return was filed, whichever period expires later. An action may be brought although the person owing the fees or tax is not presently licensed.
12. Institute an action in any district court for declaratory or injunctive relief against a person, whether or not the person is a gaming licensee as the attorney general deems necessary to prevent noncompliance with this chapter or gaming rules.

SECTION 20. AMENDMENT. Section 53-06.1-16 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-16. Violation of chapter law or rule - Misdemeanor - Forfeiture of license - Ineligibility Fraudulent scheme or technique to cheat or skim unlawful - Penalty.

1. Except as otherwise provided by this chapter, a person who knowingly makes a false statement on a request for record check form or in any application for a local permit, or license, or ~~authorizing resolution~~ or in any accompanying statement ~~annexed thereto~~, knowingly signs a false record or report, or who fails to ~~keep~~ maintain sufficient books and records or adequate internal control to substantiate gross proceeds, prizes, cash profits, expenses, or ~~devotion~~ disbursement of net proceeds, or who falsifies any books or records relating to any transaction ~~connected with~~ involving the holding, operating, and conducting direct or indirect conduct of games, or who violates this chapter, any gaming rule, or of any term of a local permit or license is guilty of a class A misdemeanor. If convicted, the person forfeits any gaming license or local permit issued to it ~~pursuant to this chapter~~ and is ineligible to reapply for a gaming license or local permit for a period of time determined by the attorney general. ~~Notwithstanding section 5-02-02, an eligible organization that possesses a license issued under chapter 5-02~~

~~may not have that license suspended, revoked, or denied in consequence of action taken under this section.~~

2. It is unlawful for a person playing or conducting a game:
 - a. To use bogus or counterfeit chips or pull tabs, or to substitute or use any game, cards, pull tabs, or game piece that have been marked or tampered with.
 - b. To employ or have on one's person any cheating device to facilitate cheating in any game, or to attempt to commit or commit a theft, or to assist in committing any other fraudulent scheme.
 - c. To willfully use any fraudulent scheme or technique, including when a person directly or indirectly solicits, provides, or receives inside information of the status of a game of pull tabs for the benefit of any person.
 - d. To alter or counterfeit a site authorization, license, or North Dakota gaming stamp.
 - e. To knowingly cause, aid, abet, or conspire with another person or to cause any person to violate this chapter or a gaming rule.

A person violating this subsection is guilty of a class A misdemeanor unless the total amount gained through the use of these items, schemes, or techniques resulted in a person obtaining over five hundred dollars, then the offense is a class C felony. However, if a person uses a fraudulent scheme regarding soliciting, providing, or receiving inside information involving the game of pull tabs or uses a fraudulent scheme or technique to cheat or skim involving pull tabs, twenty-one, or bingo, regardless of the amount gained, the offense is a class C felony.

SECTION 21. REPEAL. Section 53-06.1-15.3 of the North Dakota Century Code and sections 53-06.1-01.2, 53-06.1-02, 53-06.1-03.1, 53-06.1-03.2, 53-06.1-03.3, 53-06.1-05.1, 53-06.1-06.1, 53-06.1-07, 53-06.1-07.1, 53-06.1-12.1, 53-06.1-12.2, 53-06.1-13, 53-06.1-13.1, 53-06.1-15, 53-06.1-15.2, 53-06.1-15.4, 53-06.1-16.1, 53-06.1-16.2, and 53-06.1-17 of the 1995 Supplement to the North Dakota Century Code are repealed.

SECTION 22. CHARITABLE GAMING INDUSTRY STUDY. The legislative council shall study the charitable gaming laws and rules to determine whether the laws and rules regarding taxation, enforcement, limitations, conduct, and play of charitable gaming are adequate and appropriate. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-sixth legislative assembly.

Approved April 10, 1997
Filed April 10, 1997

CHAPTER 429

SENATE BILL NO. 2318

(Senators Thane, Kringstad, Sand, W. Stenehjem)
(Representatives Maragos, Oban)

COMPULSIVE GAMBLING TREATMENT PROGRAM

AN ACT to create and enact two new subsections to section 53-06.1-01 and a new section to chapter 53-06.1 of the North Dakota Century Code, relating to the development and implementation of a compulsive gambling awareness, rehabilitation, and treatment program by the department of human services; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁴ **SECTION 1.** Two new subsections to section 53-06.1-01 of the 1995 Supplement to the North Dakota Century Code are created and enacted as follows:

"Compulsive gambler" means an individual who is chronically and progressively preoccupied with gambling and the urge to gamble and with gambling behavior that compromises, disrupts, or damages personal, family, or vocational pursuits.

"Qualified treatment service provider" means an entity based in North Dakota which is experienced in and capable of delivering compulsive gambling education, prevention, awareness, crisis intervention, rehabilitation, and financial counseling and mental health treatment services as defined by the department of human services.

SECTION 2. A new section to chapter 53-06.1 of the North Dakota Century Code is created and enacted as follows:

Compulsive gambling prevention, awareness, crisis intervention, rehabilitation, and treatment services. The department of human services shall contract with qualified treatment service providers for the development and implementation of a program for gambling prevention, awareness, crisis intervention, rehabilitation, and financial counseling and mental health treatment services. The program may provide outpatient services; partial care services; aftercare services; intervention services; financial counseling services; consultation services; or other forms of preventive, rehabilitative, or treatment services for compulsive gamblers. An individual who provides treatment services must meet the minimum standards for certification as a gambling counselor as established by the national council on problem gambling and be a mental health professional as defined in section 25-03.1-02. An individual who provides financial counseling services must be a certified consumer credit counselor with an accredited financial counseling agency. The department of human services may establish a sliding payment scale for services

⁴ Section 53-06.1-01 was also amended by section 3 of House Bill No. 1167, chapter 428.

under the program. The department of human services may establish a centrally located repository of educational materials on identifying and treating compulsive gambling. Any service fee collected by qualified treatment service providers for services provided under the contract must be applied toward the program's compulsive gambling services.

SECTION 3. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$150,000, or so much of the sum as may be necessary, to the department of human services for the purpose of implementing section 2 of this Act, for the biennium beginning July 1, 1997, and ending June 30, 1999.

Approved April 9, 1997

Filed April 10, 1997

STATE GOVERNMENT

CHAPTER 430

SENATE BILL NO. 2150

(Senator G. Nelson)

GREAT SEAL USE

AN ACT to amend and reenact section 54-02-01 of the North Dakota Century Code, relating to permitted uses of the great seal; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-02-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-02-01. Great seal - Permitted uses - Penalty for commercial use.

1. The great seal of the state is that prescribed in section 2 of article XI of the Constitution of North Dakota. A description in writing of such seal must be deposited and recorded in the office of the secretary of state and must remain a public record. A reproduction of the great seal may be placed on any official form, document, or stationery of any agency, authority, board, body, branch, bureau, commission, committee, council, department, division, industry, institution, or instrumentality of the state or of any elected or appointed official of the state. A reproduction of the great seal may be placed on business calling cards produced for the use of an elected or appointed state official or state employee regardless of whether the cards are purchased by the official or employee or by the state. Any use of the great seal on any other object or thing by any of the foregoing state entities or officials is prohibited unless approved by the secretary of state; provided, however, that the state historical society and the parks and recreation department may, with the concurrence of the secretary of state, reproduce the great seal on any objects they offer for sale as souvenirs.
2. It is a class B misdemeanor for any person to:
 - a. Place or cause to be placed the great seal, or any reproduction of the great seal, on any political badge, button, insignia, pamphlet, folder, display card, sign, poster, billboard, or on any other public advertisement, or to otherwise use the great seal for any political purpose, as defined in section 16.1-10-02.
 - b. Place or cause to be placed on the great seal, or any reproduction thereof, any advertisement.
 - c. Expose the great seal, or any reproduction thereof, to public view with any advertisement attached thereto.

- d. Utilize the great seal, or a copy or reproduction thereof, for any commercial purpose.

As used in this subsection, "advertisement" means any printed matter, device, picture, or symbol, no matter how presented to the senses, which informs the public that a good or service is available; and "commercial purpose" means with intent to produce a pecuniary gain through sale of a good or service. Notwithstanding any other provision of law, the secretary of state may grant a written request by a private vendor to reproduce official state forms and documents, containing a reproduction of the great seal, for resale to persons intending to submit the forms or documents to any state entity in the regular course of business. The secretary of state may also grant a written request by a publisher, educational institution, or author to reproduce the great seal in any research, reference, or educational publication containing a compilation of the great seals of other states.

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

Approved March 25, 1997
Filed March 26, 1997

CHAPTER 431**HOUSE BILL NO. 1081**

(Representative Carlson)

REPRESENTATIVES ELECTION AND TERM

AN ACT to create and enact a new section to chapter 54-03 of the North Dakota Century Code, relating to the election and term of office of representatives.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-03 of the North Dakota Century Code is created and enacted as follows:

Staggering of terms of representatives. The term of office of a representative is four years, except a representative from an even-numbered district must be elected in 1998 for a term of two years.

Approved March 26, 1997
Filed March 27, 1997

CHAPTER 432

SENATE BILL NO. 2052

(Appropriations Committee)

(At the request of the Legislative Compensation Commission)

MEETING COMPENSATION AND REIMBURSEMENT

AN ACT to amend and reenact sections 4-09-03.1, 4-10.2-05, 4-10.3-05, 4-10.4-05, 4-10.5-04, 4-10.6-04, subsection 3 of section 4-27-05, section 4-28-05, the new section as provided by section 5 of Senate Bill No. 2124, sections 12-59-02, 15-10-08, 21-10-01, 23-01-02, 23-18.2-04, 24-02-37.1, subsection 2 of section 25-02-01.1, sections 25-04-20, 43-12.1-07, 43-35-07, 49-21-22.1, subdivision a of subsection 4 of section 49-23-03, subsection 13 of the new section to chapter 50-01.2 as created by section 2 of House Bill No. 1041, section 54-03-19.1, subsection 4 of section 54-06-25, the new section as provided by section 4 of Senate Bill No. 2298, sections 54-24.3-02, 54-24.4-02 as created by section 19 of House Bill No. 1035, 54-35.2-04, subsection 6 of section 54-52-03, the new section as provided by section 4 of Senate Bill No. 2271, sections 61-02-12, 61-04.1-07, 61-06-22, 61-24-04, 61-24.5-04, the new section as provided by section 3 of Senate Bill No. 2239, and the new section to chapter 65-02 as created by section 4 of House Bill No. 1440, of the North Dakota Century Code, relating to compensation and reimbursement of members of various boards, councils, and commissions and the appointment of members of the legislative compensation commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-09-03.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-03.1. State seed arbitration board - Compensation and expenses. The state seed arbitration board consists of the commissioner of agriculture, the director of the North Dakota state university extension service, the director of the North Dakota agricultural experiment station, the chair of the North Dakota seed trade committee of the North Dakota agriculture association, and a representative of a major North Dakota farm organization appointed by the commissioner of agriculture, or their authorized designees. Each board member is entitled to receive ~~the same as~~ as per diem compensation ~~as provided for members of the legislative council under section 54-35-10~~ sixty-two dollars and fifty cents, and reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the board, except that no compensation under this section may be paid to any member who receives compensation or salary as a regular state employee or official. Compensation and expenses for board members who do not receive compensation or salary as a regular state employee or official must be paid by the department of agriculture.

¹ **SECTION 2. AMENDMENT.** Section 4-10.2-05 of the North Dakota Century Code as amended by section 2 of House Bill No. 1199, as approved by the fifty-fifth legislative assembly, is amended and reenacted as follows:

4-10.2-05. Meetings - Quorum - Compensation and expenses of council. A majority of the voting members of the council constitutes a quorum for the transaction of all business in carrying out the duties of the council. All meetings of the council must be called by the chairman except special meetings which must be called by the chairman on the petition of two council members within seven days of receiving such a petition. Each member of the council is entitled to receive ~~the same per diem as~~ compensation as ~~provided for members of the legislative council under section 54-35-10,~~ sixty-two dollars and fifty cents per day and to reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the council. No compensation may be paid under this section to any member who receives compensation or salary as a regular state employee or official.

² **SECTION 3. AMENDMENT.** Section 4-10.3-05 of the North Dakota Century Code as amended by section 8 of House Bill No. 1339, as approved by the fifty-fifth legislative assembly, is amended and reenacted as follows:

4-10.3-05. Meetings - Quorum - Compensation and expenses of council. A majority of the voting members of the council constitutes a quorum for the transaction of all business in carrying out the duties of the council. The chairman shall call meetings of the council. The chairman shall call all special meetings on the petition of three council members within seven days of receiving the petition. Each member of the council; is entitled to receive ~~the same per diem as~~ compensation as ~~provided for members of the legislative council under section 54-35-10,~~ sixty-two dollars and fifty cents per day and to reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the council. No compensation may be paid under this section to any member who receives compensation or salary as a regular state employee or official.

SECTION 4. AMENDMENT. Section 4-10.4-05 of the North Dakota Century Code is amended and reenacted as follows:

4-10.4-05. Meetings - Quorum - Compensation and expenses of council. A quorum is necessary for the transaction of all business in carrying out the duties of the council. The chairman shall call all meetings of the council except special meetings which the chairman shall call on the petition of two council members within seven days of receiving such a petition. Each voting member of the council is entitled to receive ~~the same~~ sixty-two dollars and fifty cents as compensation per day as ~~provided in section 54-35-10 for members of the legislative council and their~~ necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09 while attending council meetings or in the performance of such special duties as the council may direct. The compensation provided in this section ~~must~~ may not be paid to any member of the council who receives salary or other compensation as a regular employee of the state.

¹ Section 4-10.2-05 was also amended by section 2 of House Bill No. 1199, chapter 62.

² Section 4-10.3-05 was also amended by section 8 of House Bill No. 1339, chapter 63.

SECTION 5. AMENDMENT. Section 4-10.5-04 of the North Dakota Century Code is amended and reenacted as follows:

4-10.5-04. Meetings - Quorum - Compensation and expenses of council. All meetings of the council must be called by the chairman except special meetings which must be called by the chairman on the petition of three council members within seven days of receiving the petition. Each member of the council, except the commissioner, ~~will~~ is entitled to receive the same sixty-two dollars and fifty cents per day as compensation as provided for members of the legislative council under section 54-35-10, together with expenses as provided in sections 44-08-04 and 54-06-09, while attending meetings or performing duties directed by the council, except that no compensation may be paid to any council member who receives compensation or salary as a regular state employee or official.

SECTION 6. AMENDMENT. Section 4-10.6-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-10.6-04. Meetings - Compensation and expenses of council. The chairman shall call all meetings of the council. The chairman shall call special meetings on the petition of three council members, within seven days of receiving the petition. Each council member is entitled to receive ~~the same as~~ per diem compensation as provided for members of the legislative council under section 54-35-10 sixty-two dollars and fifty cents, and reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the council, except that no compensation under this section may be paid to any member who receives compensation or salary as a regular state employee or official.

SECTION 7. AMENDMENT. Subsection 3 of section 4-27-05 of the North Dakota Century Code is amended and reenacted as follows:

3. The appointive and elected members of the commission ~~shall~~ are entitled to receive a salary equal to seventy-five percent of the compensation of forty-seven dollars per day as provided in section 54-35-10 for members of the legislative council while actually engaged in the official duties of the commission, plus their actual expenses at the same rates as other state officials.

SECTION 8. AMENDMENT. Section 4-28-05 of the North Dakota Century Code is amended and reenacted as follows:

4-28-05. Wheat commission - Meeting - Expenses - Legal adviser. Upon call of the governor, the commission shall first meet and organize by electing from the membership a chairman and vice chairman, who shall hold office for one year and until their successors are elected and have qualified. Thereafter the commission shall meet at least once every calendar quarter at such times and places as ~~must be~~ determined by the commission and may meet in special meetings upon such call and notice as ~~may be~~ prescribed by rules adopted by the commission. Members of the commission must be reimbursed for actual expenses necessarily incurred in attending meetings and performing other official duties on the same basis as other state officers and are entitled to receive ~~the same as~~ per diem compensation as provided in section 54-35-10 for members of the legislative council sixty-two dollars and fifty cents for each day actually devoted to official business of the commission. The attorney general shall act as legal adviser to the commission or designate an assistant for that purpose and within the limit of the funds available to the commission it may employ other counsel to advise and represent the commission in its affairs and proceedings.

³ **SECTION 9. AMENDMENT.** The new section as provided by section 5 of Senate Bill No. 2124, as approved by the fifty-fifth legislative assembly, is amended and reenacted as follows:

Meetings - Quorum - Compensation of council members. A majority of the voting members of the council ~~constitute~~ constitutes a quorum for the transaction of all business in carrying out the duties of the council. All meetings of the council must be called by the chairman except special meetings which must be called by the chairman on the petition of three council members within seven days of receiving the petition. Each member of the council is entitled to receive ~~the same per diem as~~ compensation as provided for members of the legislative council under section 54-35-10, sixty-two dollars and fifty cents per day and to reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the council, except that no compensation under this section may be paid to any member who receives compensation or salary as a regular state employee or official.

⁴ **SECTION 10. AMENDMENT.** Section 12-59-02 of the North Dakota Century Code as amended by section 1 of Senate Bill No. 2128, as approved by the fifty-fifth legislative assembly, is amended and reenacted as follows:

12-59-02. Meetings - Compensation. The board shall organize by selecting a chairman. Meetings of the board must be held as often as required to properly conduct the business of the board, but in any event not less than six times per year. The parole board may only take action upon the concurrence of at least two members. Members are entitled to be compensated at the ~~same rate provided for members of the legislative council under section 54-35-10~~ of sixty-two dollars and fifty cents per day for each day actually and necessarily spent in the performance of their duties as board members plus the same mileage and expenses as are authorized for state officials and employees. The director of the division of parole and probation, or the director's designee, shall be the clerk for the parole board.

⁵ **SECTION 11. AMENDMENT.** Section 15-10-08 of the North Dakota Century Code as amended by section 1 of House Bill No. 1312, as approved by the fifty-fifth legislative assembly, is amended and reenacted as follows:

15-10-08. Compensation of board members - Expenses - Legislative appropriations. Each member of the state board of higher education, except the student member, is entitled to receive as compensation sixty-two dollars and fifty cents per day ~~in the same amount provided for members of the legislative council~~ for each calendar day actually spent devoted to the duties of office, and necessary expenses in the same manner and amounts as other state officials for attending meetings and performing other functions of office. The legislative assembly shall provide adequate funds to carry out the functions and duties of the board.

³ Section 4-10.7-05 was created by section 5 of Senate Bill No. 2124, chapter 66.

⁴ Section 12-59-02 was also amended by section 1 of Senate Bill No. 2128, chapter 116.

⁵ Section 15-10-08 was also amended by section 1 of House Bill No. 1312, chapter 155.

SECTION 12. AMENDMENT. Section 21-10-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

21-10-01. State investment board - Membership - Term - Compensation - Advisory council.

1. The North Dakota state investment board consists of the governor, the state treasurer, the commissioner of university and school lands, the director of the workers compensation bureau, the commissioner of insurance, three members of the teachers' fund for retirement board or the board's designees who need not be members of the fund as selected by that board, and three of the elected members of the public employees retirement system board as selected by that board. The teachers' fund for retirement board may appoint an alternate designee with full voting privileges to attend meetings of the state investment board when a selected member is unable to attend. The public employees retirement system board may appoint an alternate designee with full voting privileges from the public employees retirement system board to attend meetings of the state investment board when a selected member is unable to attend. The members of the state investment board, except elected and appointed officials, are entitled to receive the same sixty-two dollars and fifty cents as compensation per day as provided in section 54-35-10 for members of the legislative council and necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09 for attending meetings of the state investment board.
2. The state investment board may establish an advisory council composed of individuals who are experienced and knowledgeable in the field of investments. The state investment board shall determine the responsibilities of the advisory council. Members of the advisory council are entitled to receive the same compensation as provided the members of the advisory board of the Bank of North Dakota and necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09.

⁶ **SECTION 13. AMENDMENT.** Section 23-01-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-01-02. Health council - Members, terms of office, vacancies, compensation, officers, meetings. The health council consists of nine members appointed by the governor in the following manner: Four persons from the health care field and five persons representing consumer interests. The governor may select members to the council from recommendations submitted by trade, professional, and consumer organizations. On the expiration of the term of any member, the governor, in the manner provided by this section, shall appoint for a term of three years, persons to take the place of members whose terms on the council are about to expire. The officers of the council must be elected annually. Any state agency may serve in an advisory capacity to the health council at the discretion of the council. The council shall meet at least twice each year and at other times as the council or its chairman may direct. The health council shall have as standing committees any committees

⁶ Section 23-01-02 was also amended by section 1 of House Bill No. 1410, chapter 232.

the council may find necessary. The chairman of the council shall select the members of these committees. The members of the council are entitled to receive ~~the same sixty-two dollars and fifty cents as compensation per day as provided in section 54-35-10 for members of the legislative council~~ and their necessary mileage and travel expenses as provided in sections 54-06-09 and 44-08-04 while attending council meetings or in the performance of any special duties as the council may direct. The per diem and expenses must be audited and paid in the manner in which the expenses of state officers are audited and paid. The compensation provided for in this section may not be paid to any member of the council who received salary or other compensation as a regular employee of the state, or any of its political subdivisions, or any institution or industry operated by the state.

SECTION 14. AMENDMENT. Section 23-18.2-04 of the North Dakota Century Code is amended and reenacted as follows:

23-18.2-04. Commissioners of authority - Appointment, compensation, qualifications, tenure. Upon an affirmative vote of the county electors in the election required by section 23-18.2-03, the board of county commissioners shall appoint five persons as commissioners for the authority created in ~~such~~ the county. The commissioners who are first appointed must be designated to serve for terms of one, two, three, four, and five years, respectively, from the date of their appointment, and thereafter, each commissioner must be appointed for a term of five years, except that all vacancies must be filled for the unexpired term. No commissioner of an authority may be an officer or an employee of the county for which the authority is created. A commissioner shall hold office until ~~his~~ a successor has been appointed and has qualified. A commissioner ~~shall~~ is entitled to receive as compensation in the amount provided in subsection 4 of section 54-35-10 sixty-two dollars and fifty cents per day while actually engaged in official duties of the authority and must be reimbursed for mileage and expenses in the amounts provided by sections 44-08-04 and 54-06-09.

⁷ **SECTION 15. AMENDMENT.** Section 24-02-37.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24-02-37.1. Special road advisory committee. The special road advisory committee consists of one member of the senate transportation committee and one member of the senate appropriations committee appointed by the chairman of the legislative council and one member of the house of representatives transportation committee and one member of the house of representatives appropriations committee appointed by the chairman of the legislative council and also the director of the game and fish department, the director of the parks and recreation department, the director of the department of economic development and finance, and the commissioner. The committee shall meet at the call of the commissioner, who is chairman of the committee, to review requests for funding from the special road fund and to advise the commissioner regarding funding requested projects. The commissioner shall provide staff services to the committee. All final decisions regarding funding requested projects are in the sole discretion of the commissioner. The members of the commission who are members of the legislative assembly must be compensated by the department, from moneys appropriated from the special road fund, for attendance at committee meetings at the rate provided ~~in section 54-35-10~~

⁷ Section 24-02-37.1 was also amended by section 8 of Senate Bill No. 2012, chapter 41, and repealed by section 11 of Senate Bill No. 2012, chapter 41.

for members of the legislative assembly for attendance at interim committee meetings and are entitled to reimbursement for expenses incurred in attending the meetings in the amounts provided by law for other state officers.

SECTION 16. AMENDMENT. Subsection 2 of section 25-02-01.1 of the North Dakota Century Code is amended and reenacted as follows:

2. The department, in consultation with the state hospital, shall create a state hospital governing body and shall by rules describe the powers and duties of the governing body. The department shall compensate ~~and reimburse~~ members not employed by the department in the ~~same manner and amount as members of the legislative council are compensated and reimbursed under section 54-35-10~~ of sixty-two dollars and fifty cents per day and reimburse members for expenses incurred in attending meetings in the amounts provided by sections 44-08-04 and 54-06-09.

⁸ **SECTION 17. AMENDMENT.** Section 25-04-20 of the North Dakota Century Code is amended and reenacted as follows:

25-04-20. Westwood park assets management committee. The westwood park assets management committee consists of eleven members appointed by the governor as follows: three members of the senate, two from the majority faction and one from the minority faction, and three members of the house of representatives, two from the majority faction and one from the minority faction; a representative of the department of human services; a representative of the department of economic development and finance; a representative of the attorney general's office; the mayor of Grafton; and the governor or the governor's designee. The officers of the westwood park assets management committee must be elected annually. Any state agency may serve in an advisory capacity to the westwood park assets management committee at the discretion of the committee. The committee shall meet at least twice each year and at other times as the committee or its chairman may direct. The legislative members of the committee are entitled to receive the same compensation per day as ~~provided in section 54-35-10~~ established for members of the legislative council assembly for attendance at interim committee meetings and the necessary mileage and travel expenses provided in sections 44-08-04 and 54-06-09 while attending committee meetings or in the performance of such special duties as the committee may direct. The compensation provided for in this section may not be paid to any member of the committee who received salary or other compensation as a regular employee of the state, or any of its political subdivisions, or any institution or industry operated by the state. The westwood park assets management committee shall act when the legislative assembly is not in session to sell, lease, and otherwise manage the property of westwood park, subject to prior budget section approval. The department of human services shall provide staff services for the westwood park assets committee. Any conveyance made by the committee under this section is exempt from sections 54-01-05.2 and 54-01-05.5.

SECTION 18. AMENDMENT. Section 43-12.1-07 of the North Dakota Century Code is amended and reenacted as follows:

⁸ Section 25-04-20 was also amended by section 10 of House Bill No. 1012, chapter 12.

43-12.1-07. Compensation of board members. In addition to the expenses incurred while engaged in the performance of the duties of office, each board member shall receive a per diem fee not to exceed ~~the compensation allowed members of the legislative assembly~~ ninety dollars for each day of service ~~under section 54-03-20.~~

SECTION 19. AMENDMENT. Section 43-35-07 of the North Dakota Century Code is amended and reenacted as follows:

43-35-07. Compensation and reimbursement of expenses. Each appointive member of the board ~~shall~~ is entitled to receive the same sixty-two dollars and fifty cents compensation per day and must be reimbursed for his expenses in the same amounts as provided for in ~~section 54-35-10 for members of the legislative council~~ sections 44-08-04 and 54-06-09 while attending board meetings or otherwise engaged in the official business of the board.

SECTION 20. AMENDMENT. Section 49-21-22.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-22.1. (Effective until December 31, 1998) Regulatory reform review commission - Appointments - Compensation - Report to legislative council. The regulatory reform review commission shall review the operation and effect of North Dakota telecommunications law on an ongoing basis during the interims between the 1995 and 1999 legislative sessions and shall submit a report regarding its operation and effect to the legislative council in 1996 and 1998. The regulatory reform review commission may review the effect of taxation laws on North Dakota telecommunications law during the interims between the 1995 and 1999 legislative sessions and may include any findings and recommendations with respect to its review of the effect of taxation laws on North Dakota telecommunications law in the report to the legislative council in 1996 and 1998. The regulatory reform review commission consists of one member of the public service commission who has responsibility for telecommunications regulation, two members of the senate, appointed by the president of the senate, and two members of the house of representatives, appointed by the speaker. The chairman of the legislative council shall designate the chairman and vice chairman of the regulatory reform review commission from the legislative members of the commission. The public service commission shall provide technical assistance and the legislative council shall provide staff services to the regulatory reform review commission. The legislative members of the regulatory reform review commission are entitled to the same compensation as provided for members of committees of the legislative council ~~under section 54-35-10.~~ The legislative council shall pay the compensation for the legislative members of the regulatory reform review commission. The public service commission shall pay the expenses of the member of the public service commission serving on the regulatory reform review commission and of the public service commission staff providing technical assistance while carrying out their duties.

⁹ **SECTION 21. AMENDMENT.** Subdivision a of subsection 4 of section 49-23-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

⁹ Section 49-23-03 was also amended by section 1 of Senate Bill No. 2328, chapter 402.

- a. The nonprofit corporation must be incorporated by seventeen initial incorporators, with one member representing the house of representatives and one member representing the senate appointed by the legislative council, one member representing telecommunications companies offering local exchange service to fewer than fifty thousand subscribers, one member representing telecommunications companies offering local exchange service to fifty thousand or more subscribers, one member representing rural water systems, one member representing rural electric cooperatives, one member representing investor-owned electric utilities, one member representing investor-owned natural gas utilities, one member representing cable television systems, one member representing cities with a population of fewer than five thousand, one member representing cities with a population of at least five thousand, one member representing counties, one member representing underground interstate carriers of gas, one member representing interstate carriers of petroleum, one member representing interstate carriers of telecommunications services, one member representing contractors who perform excavation services, and one member representing the production sector of the American petroleum institute. The initial incorporators must represent and be designated by operators, excavators, and other persons eligible to participate in the center. The legislative members are entitled to the same compensation and expenses as provided for members of committees of the legislative council ~~under section 54-35-10~~. The legislative council shall pay the compensation for the legislative members.

¹⁰ **SECTION 22. AMENDMENT.** Subsection 13 of the new section to chapter 50-01.2 of the North Dakota Century Code as created by section 2 of House Bill No. 1041, as approved by the fifty-fifth legislative assembly, is amended and reenacted as follows:

13. Members of a peer review committee are entitled to receive compensation by the department in the ~~same amounts as members of the legislative council~~ amount of sixty-two dollars and fifty cents per day. The county requesting the review shall reimburse the department for one-half of that cost.

SECTION 23. AMENDMENT. Section 54-03-19.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-03-19.1. Legislative compensation commission - Appointment of members.

1. The legislative compensation commission shall develop recommendations for a long-term policy on legislative compensation, expense allowance, and insurance benefits, and recommend appropriate levels of compensation, expense allowance, and insurance benefits to be paid to or on behalf of members of the legislative assembly.

¹⁰ Section 50-01.2-06 was created by section 2 of House Bill No. 1041, chapter 403.

2. The governor shall appoint five members to the commission. No more than three appointees may represent the same political party. No member of the commission may hold state office or serve in state government in any capacity at the time of appointment or during service on the commission. The members must be appointed for a term of four years, and the governor shall appoint one of the members chairman of the commission.

¹¹ **SECTION 24. AMENDMENT.** Subsection 4 of section 54-06-25 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. The members of the legislative assembly who are commission members are entitled to receive compensation from the legislative council for each day in attendance at commission meetings in the same manner as provided ~~in section 54-35-10~~ for members of the legislative council and reimbursement from the legislative council for travel and other necessary expenses incurred in performing commission duties in the amounts provided for state employees under section 54-06-09. The state employee members of the commission are entitled to receive reimbursement for necessary expenses incurred in attending commission meetings at the rates provided for state employees under section 54-06-09 and may not be assessed any annual leave or loss of salary for attendance at meetings of the commission. The employing agency of state employee members shall pay their expenses.

SECTION 25. AMENDMENT. The new section as provided by section 4 of Senate Bill No. 2298, as approved by the fifty-fifth legislative assembly, is amended and reenacted as follows:

Board of directors - Officers - Meetings - Compensation. The board of directors consists of nine members. Except as provided in section 6, each director must reside within the area of the director's county comprising the Devils Lake basin water board. The board of directors shall elect from the directors a chairman, vice chairman, and secretary. The chairman shall designate the time and place for the board of directors to meet; however, the board of directors shall meet if three directors call for a meeting. The secretary shall notify, by mail, each director of meetings. The board of directors must meet at least once each quarter. A director is entitled to receive as compensation ~~in the amount not to exceed the amount provided for members of the legislative council by section 54-35-10~~ sixty-two dollars and fifty cents per day and is entitled to be reimbursed for mileage and expenses in the amount provided for state officials by sections 44-08-04 and 54-06-09.

SECTION 26. AMENDMENT. Section 54-24.3-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-24.3-02. Committee - Membership - Compensation. The superintendent of public instruction shall appoint a seven-member statewide library planning committee. The members must include a state legislator; a representative of the superintendent of public instruction; a representative of the state library; a

¹¹ Section 54-06-25 was also amended by section 1 of Senate Bill No. 2138, chapter 440.

representative of a school library media center; a representative of a college or university library; a representative of a public library; and a representative of a special library. The term of office for each member of the committee is three years and no person may serve more than two 3-year terms. The superintendent of public instruction shall stagger the terms so that initially, three members are appointed for three years, three members are appointed for two years, and one member is appointed for one year. Each member of the committee is entitled to receive ~~the same~~ sixty-two dollars and fifty cents per day compensation ~~as provided for members of the legislative council under section 54-35-10~~, together with expenses as provided in sections 44-08-04 and 54-06-09, while attending meetings or performing duties directed by the committee, except that no compensation may be paid to any committee member who receives compensation or salary as a regular state employee or official.

¹² **SECTION 27. AMENDMENT.** Section 54-24.4-02 of the North Dakota Century Code as created by section 19 of House Bill No. 1035, as approved by the fifty-fifth legislative assembly, is amended and reenacted as follows:

54-24.4-02. North Dakota library coordinating council - Compensation and expense reimbursement. Each member of the North Dakota library coordinating council is entitled to receive ~~the same per day as~~ compensation ~~as provided for members of the legislative council under section 54-35-10~~ sixty-two dollars and fifty cents per day, together with expenses as provided in sections 44-08-04 and 54-06-09, while attending meetings or performing duties directed by the council. No compensation may be paid under this section to any council member who receives compensation as a regular state official or employee.

SECTION 28. AMENDMENT. Section 54-35.2-04 of the North Dakota Century Code is amended and reenacted as follows:

54-35.2-04. Finances.

1. A member of the advisory commission on intergovernmental relations who is a member of the legislative assembly is entitled to receive, from funds available to the commission, compensation per day for each day spent in attendance at commission meetings in the same amount as provided ~~in section 54-35-10~~ for members of the legislative council and reimbursement for travel and other necessary expenses incurred in the performance of official duties in the amounts provided by law for other state officers. Members of the advisory commission on intergovernmental relations who are appointed by an organization representing political subdivisions may be reimbursed for attendance at commission meetings by the organization by which they were appointed.
2. The commission may apply for, contract for, receive, and expend for its purposes any appropriation or grant from any public or private source.
3. Political subdivisions of the state may appropriate funds to the commission to share in the cost of its operations.

¹² Section 54-24.4-02 was created by section 19 of House Bill No. 1035, chapter 453.

SECTION 29. AMENDMENT. Subsection 6 of section 54-52-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. The members of the board are entitled to receive sixty-two dollars and fifty cents per day compensation ~~as provided in section 54-35-10 for members of the legislative council~~ and necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09. This is in addition to any other pay or allowance due the chairman or a member, plus an allowance for expenses they may incur through service on the board.

SECTION 30. AMENDMENT. The new section as provided by section 4 of Senate Bill No. 2271, as approved by the fifty-fifth legislative assembly, is amended and reenacted as follows:

Board of directors - Officers - Meetings - Compensation. The board of directors of a regional water resource district consists of one member from each of the existing water resource districts within the regional district. Each director must be a member of a water resource district board. The regional water resource district board shall elect from the members a chairman, vice chairman, and secretary. The chairman shall designate the time and place for the board to meet; however, the board shall meet if three directors call for a meeting. The secretary shall notify, by mail, each member of meetings. A member is entitled to receive as compensation sixty-two dollars and fifty cents per day from the water resource district the member represents on the regional board ~~in the amount not to exceed the amount provided for members of the legislative council by section 54-35-10~~ and is entitled to be reimbursed for mileage and expenses in the amount provided for state officials by sections 44-08-04 and 54-06-09.

SECTION 31. AMENDMENT. Section 61-02-12 of the North Dakota Century Code is amended and reenacted as follows:

61-02-12. Compensation and expenses of appointive members of commission. Each appointive member of the commission ~~shall~~ is entitled to receive the same sixty-two dollars and fifty cents compensation per day and must be reimbursed for expenses in the ~~same~~ same amounts ~~as provided for in section 54-35-10 for members of the legislative council~~ sections 44-08-04 and 54-06-09 while attending meetings of the commission or, at the discretion of the member, ~~shall~~ may receive either per diem compensation or expenses in ~~the those~~ those amounts ~~provided in section 54-35-10~~ while otherwise engaged in official business of the commission, including time of travel between home and the place at which the member performs such duties.

SECTION 32. AMENDMENT. Section 61-04.1-07 of the North Dakota Century Code is amended and reenacted as follows:

61-04.1-07. Board officers - Compensation. All members of the board, with the exception of the chairman, ~~shall be~~ are voting members. The board shall elect annually from its membership a chairman, vice chairman, and secretary. A majority of the members ~~shall~~ constitute a quorum for the purpose of conducting the business of the board. Board members who are not full-time salaried employees of this state ~~shall~~ are entitled to receive compensation ~~in the amount provided in subsection 4 of section 54-35-10,~~ of sixty-two dollars and fifty cents per day and ~~shall~~ must be reimbursed for their mileage and expenses in the amounts provided by sections 44-08-04 and 54-06-09. All other members of the board ~~shall~~ must be reimbursed

for necessary travel and other expenses incurred in the performance of the business of the board in the amounts provided in sections 44-08-04 and 54-06-09.

SECTION 33. AMENDMENT. Section 61-06-22 of the North Dakota Century Code is amended and reenacted as follows:

61-06-22. Directors and officers - Salary, mileage, and expenses. The compensation for each director per day while performing duties as a member of the board ~~shall~~ must be fixed by the board of directors, but ~~shall~~ may be no more than ~~the compensation~~ sixty-two dollars and fifty cents per day as provided for in section 54-35-10 for members of the legislative council. The allowance for meals and lodging expenses ~~shall~~ must be at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses ~~shall~~ must be at the same rate as provided by section 11-10-15 and ~~shall~~ must be evidenced by a subvoucher or receipt, in a manner determined by the board of directors. The salary of the secretary, assessor, and treasurer ~~shall~~ must be determined by the board of directors.

SECTION 34. AMENDMENT. Section 61-24-04 of the North Dakota Century Code is amended and reenacted as follows:

61-24-04. Compensation of directors. Each member of the board of directors of the district ~~shall~~ is entitled to receive from the district the same sixty-two dollars and fifty cents compensation per day and shall must be reimbursed for the member's expenses in the ~~same amounts as provided for in section 54-35-10 for members of the legislative council~~ sections 44-08-04 and 54-06-09 while attending meetings of the board or otherwise engaged in the official business of the district.

SECTION 35. AMENDMENT. Section 61-24.5-04 of the North Dakota Century Code is amended and reenacted as follows:

61-24.5-04. Board of directors - Officers - Meetings - Compensation. The authority must be governed by a board of directors who must be chosen in accordance with ~~the provisions of~~ this chapter. At the first election after the initial board of directors has been appointed, two directors must be elected from each county within the authority, and three directors must be elected in the city of Dickinson. The two directors from Stark County may not be residents of the city of Dickinson. The board shall elect from the directors a chairman, vice chairman, and secretary. A majority of the directors constitutes a quorum for the purpose of conducting the business of the board. The board shall meet at the time and place designated by the secretary. Board members ~~shall~~ are entitled to receive compensation in the amount not to exceed ~~the amount provided for by subsection 4 of section 54-35-10~~ sixty-two dollars and fifty cents per day, and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.

¹³ **SECTION 36. AMENDMENT.** The new section as provided by section 3 of Senate Bill No. 2239, as approved by the fifty-fifth legislative assembly, is amended and reenacted as follows:

¹³ Section 61-36-03 was created by section 3 of Senate Bill No. 2239, chapter 524.

Compensation and expenses. Each member appointed by the governor is entitled to receive ~~the same as~~ compensation sixty-two dollars and fifty cents per day and must be reimbursed for expenses, while attending meetings of the committee; ~~in the same amounts as provided for in section 54-35-10 for members of the legislative council.~~

¹⁴ **SECTION 37. AMENDMENT.** The new section to chapter 65-02 of the North Dakota Century Code as created by section 4 of House Bill No. 1440, as approved by the fifty-fifth legislative assembly, is amended and reenacted as follows:

Compensation of board members. A board member is entitled to receive as compensation in the same amount and manner as provided for legislative council committee members under section 54-35-10 sixty-two dollars and fifty cents per day. A board member is entitled to reimbursement for mileage and expenses as provided for state officers, but the mileage allowance must equal the federal internal revenue service mileage allowance.

Approved April 1, 1997

Filed April 2, 1997

¹⁴ Section 65-02-03.2 was also amended by section 4 of House Bill No. 1440, chapter 528.

CHAPTER 433

SENATE BILL NO. 2051

(Appropriations Committee)

(At the request of the Legislative Compensation Commission)

LEGISLATIVE COMPENSATION AND REIMBURSEMENT

AN ACT to amend and reenact section 54-03-20 of the North Dakota Century Code, relating to compensation and expense reimbursement of members of the legislative assembly; to provide for retroactive application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁵ **SECTION 1. AMENDMENT.** Section 54-03-20 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-03-20. Compensation and expense reimbursement of members of the legislative assembly. Each member of the legislative assembly of the state of North Dakota is entitled to receive as compensation for services the sum of ~~ninety~~ one hundred eleven dollars for each calendar day during any organizational, special, or regular legislative session. Each member of the legislative assembly is entitled to receive reimbursement for lodging, which may not exceed a maximum of six hundred dollars per calendar month for lodging in state, at the rates and in the manner provided in section 44-08-04 for each calendar day during the period of any organizational, special, or regular session. Members of the legislative assembly who receive reimbursement for lodging are also entitled to reimbursement for travel for not to exceed one round trip taken during any calendar week, or portion of a week, the legislative assembly is in session, between their residences and the place of meeting of the legislative assembly, at the rate provided for state employees with the additional limitation that reimbursement for travel by common carrier may not exceed thirty-five cents per mile based upon air mileage. A member of the legislative assembly who does not receive reimbursement for lodging and whose place of residence in the legislative district that the member represents is not within the city of Bismarck is entitled to reimbursement at the rate provided for state employees for necessary travel for not to exceed one round trip taken per day between the residence and the place of meeting of the legislative assembly when it is in session and may receive reimbursement for lodging at the place of meeting of the legislative assembly as provided in section 44-08-04 for each calendar day for which round trip travel reimbursement is not claimed, provided that the total reimbursement may not exceed six hundred dollars per month. The amount to which each legislator is entitled must be paid following the organizational session in December and following each month during a regular or special session.

¹⁵ Section 54-03-20 was also amended by section 1 of Senate Bill No. 2053, chapter 434, and section 1 of Senate Bill No. 2056, chapter 435.

A day, or portion of a day, spent in traveling to or returning from an organizational, special, or regular session must be included as a calendar day during a legislative session for the purposes of this section.

In addition, each member is entitled to receive during the term for which the member was elected, as compensation for the execution of public duties during the biennium, the sum of ~~one~~ two hundred ~~eighty~~ fifty dollars a month, which is payable every six months or monthly, at the member's option. If a member dies or resigns from office during the member's term, the member may be paid only the allowances provided for in this section for the period for which the member was actually a member.

Attendance at any organizational, special, or regular session of the legislative assembly by any member is a conclusive presumption of entitlement as set out in this section and compensation and expense allowances must be excluded from gross income for income tax purposes to the extent permitted for federal income tax purposes under section 127 of the Economic Recovery Tax Act of 1981 [Pub. L. 97-34; 95 Stat. 202; 26 U.S.C. 162(i)].

SECTION 2. RETROACTIVE APPLICATION. This Act is retroactive in application to January 1, 1997.

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

Approved March 21, 1997
Filed March 21, 1997

CHAPTER 434

SENATE BILL NO. 2053

(Appropriations Committee)

(At the request of the Legislative Compensation Commission)

LEGISLATIVE LODGING REIMBURSEMENT

AN ACT to amend and reenact section 54-03-20 of the North Dakota Century Code, relating to compensation and reimbursement of members of the legislative assembly.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶ **SECTION 1. AMENDMENT.** Section 54-03-20 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-03-20. Compensation and expense reimbursement of members of the legislative assembly. Each member of the legislative assembly of the state of North Dakota is entitled to receive as compensation for services the sum of ninety dollars for each calendar day during any organizational, special, or regular legislative session. Each member of the legislative assembly is entitled to receive reimbursement for lodging, which may not exceed a maximum of six hundred fifty dollars per calendar month for lodging in state, at the rates and in the manner provided in section 44-08-04 for each calendar day during the period of any organizational, special, or regular session. Members of the legislative assembly who receive reimbursement for lodging are also entitled to reimbursement for travel for not to exceed one round trip taken during any calendar week, or portion of a week, the legislative assembly is in session, between their residences and the place of meeting of the legislative assembly, at the rate provided for state employees with the additional limitation that reimbursement for travel by common carrier may not exceed thirty-five cents per mile based upon air mileage. A member of the legislative assembly who does not receive reimbursement for lodging and whose place of residence in the legislative district that the member represents is not within the city of Bismarck is entitled to reimbursement at the rate provided for state employees for necessary travel for not to exceed one round trip taken per day between the residence and the place of meeting of the legislative assembly when it is in session and may receive reimbursement for lodging at the place of meeting of the legislative assembly as provided in section 44-08-04 for each calendar day for which round trip travel reimbursement is not claimed, provided that the total reimbursement may not exceed six hundred fifty dollars per month. The amount to which each legislator is entitled must be paid following the organizational session in December and following each month during a regular or special session.

A day, or portion of a day, spent in traveling to or returning from an organizational, special, or regular session must be included as a calendar day during a legislative session for the purposes of this section.

¹⁶ Section 54-03-20 was also amended by section 1 of Senate Bill No. 2051, chapter 433, and section 1 of Senate Bill No. 2056, chapter 435.

In addition, each member is entitled to receive during the term for which the member was elected, as compensation for the execution of public duties during the biennium, the sum of one hundred eighty dollars a month, which is payable every six months. If a member dies or resigns from office during the member's term, the member may be paid only the allowances provided for in this section for the period for which the member was actually a member.

Attendance at any organizational, special, or regular session of the legislative assembly by any member is a conclusive presumption of entitlement as set out in this section and compensation and expense allowances must be excluded from gross income for income tax purposes to the extent permitted for federal income tax purposes under section 127 of the Economic Recovery Tax Act of 1981 [Pub. L. 97-34; 95 Stat. 202; 26 U.S.C. 162(i)].

Approved March 19, 1997

Filed March 19, 1997

CHAPTER 435

SENATE BILL NO. 2056

(Senators C. Nelson, DeMers, Goetz)
(Representatives Aarsvold, Maragos, Nottestad)

LEGISLATIVE AND STATE EMPLOYEE TRAVEL REIMBURSEMENT

AN ACT to amend and reenact section 54-03-20 and subsection 1 of section 54-06-09 of the North Dakota Century Code, relating to expense reimbursement for members of the legislative assembly and mileage and travel expense of state officers and employees; to provide for retroactive application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷ **SECTION 1. AMENDMENT.** Section 54-03-20 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-03-20. Compensation and expense reimbursement of members of the legislative assembly. Each member of the legislative assembly of the state of North Dakota is entitled to receive as compensation for services the sum of ninety dollars for each calendar day during any organizational, special, or regular legislative session. Each member of the legislative assembly is entitled to receive reimbursement for lodging, which may not exceed a maximum of six hundred dollars per calendar month for lodging in state, at the rates and in the manner provided in section 44-08-04 for each calendar day during the period of any organizational, special, or regular session. Members of the legislative assembly who receive reimbursement for lodging are also entitled to reimbursement for travel for not to exceed one round trip taken during any calendar week, or portion of a week, the legislative assembly is in session, between their residences and the place of meeting of the legislative assembly, at the rate provided for state employees with the additional limitation that reimbursement for travel by common carrier may be only at the cost of coach fare and may not exceed thirty-five cents per mile based upon ~~at~~ one and one-half times the amount the member would be entitled to receive as mileage reimbursement for travel by motor vehicle. A member of the legislative assembly who does not receive reimbursement for lodging and whose place of residence in the legislative district that the member represents is not within the city of Bismarck is entitled to reimbursement at the rate provided for state employees for necessary travel for not to exceed one round trip taken per day between the residence and the place of meeting of the legislative assembly when it is in session and may receive reimbursement for lodging at the place of meeting of the legislative assembly as provided in section 44-08-04 for each calendar day for which round trip travel reimbursement is not claimed, provided that the total reimbursement may not exceed six hundred dollars per month. The amount to which each legislator is entitled must be paid following the organizational session in December and following each month during a regular or special session.

¹⁷ Section 54-03-20 was also amended by section 1 of Senate Bill No. 2053, chapter 434, and section 1 of Senate Bill No. 2051, chapter 433.

A day, or portion of a day, spent in traveling to or returning from an organizational, special, or regular session must be included as a calendar day during a legislative session for the purposes of this section.

In addition, each member is entitled to receive during the term for which the member was elected, as compensation for the execution of public duties during the biennium, the sum of one hundred eighty dollars a month, which is payable every six months. If a member dies or resigns from office during the member's term, the member may be paid only the allowances provided for in this section for the period for which the member was actually a member.

Attendance at any organizational, special, or regular session of the legislative assembly by any member is a conclusive presumption of entitlement as set out in this section and compensation and expense allowances must be excluded from gross income for income tax purposes to the extent permitted for federal income tax purposes under section 127 of the Economic Recovery Tax Act of 1981 [Pub. L. 97-34; 95 Stat. 202; 26 U.S.C. 162(i)].

¹⁸ **SECTION 2. AMENDMENT.** Subsection 1 of section 54-06-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The sum of twenty-five cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when ~~such~~ the travel is by motor vehicle or twenty-seven cents per mile [1.61 kilometers] if the travel is by truck, the use of which is required by the employing ~~subdivision, agency, bureau, board, or commission~~ entity. The sum of thirty-five cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when ~~such~~ the travel is by private airplane. Mileage by private aircraft must be computed by actual air mileage when only one state employee or official is traveling; if two or more state employees or officials are traveling by private aircraft, the actual mileage must be based on the road mileage between the geographical points. Reimbursement for private airplane travel must be calculated as follows:
 - a. If reimbursement is for one properly authorized and reimbursable passenger, reimbursement must be paid on a per-mile basis as provided in this subsection.
 - b. If reimbursement is claimed for a chartered private aircraft, reimbursement may not exceed the cost of regular coach fare on a commercial flight, if one is scheduled between the point of departure, point of destination, and return, for each properly authorized and reimbursable passenger on the charter flight; or, where there is no such regularly scheduled commercial flight, the actual cost of the charter.

¹⁸ Section 54-06-09 was also amended by section 10 of Senate Bill No. 2012, chapter 41.

No reimbursement may be paid for leased private aircraft, except for leased or rented private aircraft from a recognized fixed base aviation operator who is in the business of leasing and renting private aircraft and is located on an airport open for public use. If only one person ~~shall engage~~ engages in such travel in a motor vehicle exceeding at any geographical point one hundred fifty miles [241.40 kilometers] beyond the borders of this state, reimbursement ~~must be~~ is limited to eighteen cents per mile [1.61 kilometers] for the out-of-state portion of the travel beyond the first one hundred fifty miles [241.40 kilometers]. When official travel is by motor vehicle or airplane owned by the state or by any department or political subdivision ~~thereof~~ of the state, no allowance may be made or paid for such mileage, except that governmental entities may share expenses when officials or employees of those entities travel in the same motor vehicle or aircraft.

SECTION 3. RETROACTIVE APPLICATION. Section 1 of this Act is retroactive in application to January 1, 1997.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 1, 1997
Filed April 2, 1997

CHAPTER 436

SENATE BILL NO. 2213

(Senators Mathern, G. Nelson, Lindaas)
(Representatives Dorso, Boucher, Gulleeson)

COMPUTER USE FEES

AN ACT to create and enact a new section to chapter 54-03 of the North Dakota Century Code, relating to fees for the use of computer equipment and associated software by legislators.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-03 of the North Dakota Century Code is created and enacted as follows:

Personal computers and associated software used by legislators - Fee - Continuing appropriation. Notwithstanding any other provision of law, a member of the legislative assembly who is assigned a computer may use that computer and its associated equipment and software for any use that is not in violation of section 16.1-10-02 upon payment of a computer usage fee established by the legislative council.

Approved April 8, 1997
Filed April 8, 1997

CHAPTER 437**HOUSE BILL NO. 1330**
(Representatives Carlson, Grande)**STATE AGENCY CREDIT CARD PAYMENT**

AN ACT to amend and reenact section 54-06-08.2 of the North Dakota Century Code, relating to payments by credit card to state agencies, boards, commissions, the judicial branch, and political subdivisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-06-08.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-06-08.2. Payment by credit card - State credit card processor. A state agency, board, or commission, the judicial branch, or any political subdivision may accept payment by credit card of any fee, interest, penalty, tax, or other payment that is due or collectible by the agency, board, or commission. ~~To assess and account for the credit card interchange to the respective state agency, board, or commission, the~~ The Bank of North Dakota is the processing depository state credit card administrator for credit card transactions of state agencies, boards, or commissions. The Bank of North Dakota shall select a credit card processor or processors to provide credit card services to state agencies, boards, and commissions. All funds from credit card transactions must be deposited in the respective entity's account in the Bank of North Dakota. If on January 1, 1997, any state agency, board, or commission uses a credit card processor other than a credit card processor selected by the Bank of North Dakota, it may continue using that processor until June 30, 1999, or until transition to the state processor is available with minimal fee or penalty, whichever is earlier. The judicial branch may accept payment by credit card for any fees, costs, or other assessments required or imposed under state law or court rule.

Approved April 2, 1997

Filed April 3, 1997

CHAPTER 438**SENATE BILL NO. 2057**

(Senator Lips)

VOLUNTEER PAID LEAVE

AN ACT to create and enact a new section to chapter 54-06 of the North Dakota Century Code, relating to the provision of paid leave for disaster services volunteers; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-06 of the North Dakota Century Code is created and enacted as follows:

Disaster services volunteers - Leave. Upon issuance of an order or proclamation declaring a state of disaster or emergency pursuant to chapter 37-17.1, or a declaration of at least a level II disaster by the American red cross in this or any other state, the executive officer in charge of a state agency may grant a leave of absence to any full-time employee of that agency who is certified by the American red cross as a disaster services volunteer. The leave of absence must be for the purpose of allowing that employee, upon request by the American red cross, to participate in disaster relief services. A person on leave under this section is not deemed to be an employee of the state for the purposes of workers' compensation. The cumulative leave granted under this section may not exceed five working days during any calendar year. The leave may not result in a loss of compensation, seniority, annual leave, sick leave, or accrued overtime for which the employee is otherwise eligible.

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

Approved April 1, 1997
Filed April 2, 1997

CHAPTER 439

SENATE BILL NO. 2214

(Senators Watne, Traynor, W. Stenehjem)
(Representatives R. Kelsch, Kretschmar, Oban)

INDIGENT CIVIL LEGAL SERVICES FUND ADVISORY COMMITTEE COMPOSITION

AN ACT to amend and reenact section 54-06-20 of the North Dakota Century Code, relating to the composition of the indigent civil legal services fund advisory committee and to the permissible uses and limitations on funds distributed by the committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-06-20 of the North Dakota Century Code is amended and reenacted as follows:

54-06-20. Indigent civil legal services fund - Distribution - Continuing appropriation - Records.

1. An advisory committee consisting of the lieutenant governor, the ~~attorney general~~ director of the office of management and budget or the ~~attorney general's~~ director's designee, and the state court administrator shall distribute moneys deposited in the indigent civil legal services fund. Qualified legal service programs may apply for moneys in the fund. The moneys in the fund must be distributed to legal service programs operating in the state which provide, with funds appropriated by the federal legal services corporation, legal services to persons unable to afford private counsel. Allocation of funds among the programs must be based on the population served by each program, the range of legal services offered, alternative sources of funding, and other factors deemed relevant by the advisory committee. The moneys deposited in the indigent civil legal services fund in the state treasury are hereby appropriated to the advisory committee on a continuing basis for the purpose of implementing and administering a program to provide civil legal assistance to indigent individuals.
2. Recipients of funds distributed by the advisory committee shall comply with the federal Legal Services Corporation Act [42 U.S.C. 2996 et seq.].
3. Subject to the limitations in this section, funds distributed under subsection 1 may be used to provide legal services to persons unable to afford private counsel in the following types of cases:
 - a. Public benefits, including temporary assistance to needy families, unemployment compensation, general assistance, food stamps, supplemental security income, or social security disability income;
 - b. Medical assistance;
 - c. Family law matters;

- d. Housing;
 - e. Consumer issues; and
 - f. Elder law.
4. The advisory committee and each recipient of funds from the indigent civil legal services fund shall maintain records in accord with the generally accepted accounting principles. The records must account for the receipt and expenditure of all funds distributed and received and must be maintained for a period of five years from the close of the fiscal year in which the funds are distributed or received or until audited, whichever is sooner.

Approved April 17, 1997

Filed April 17, 1997

CHAPTER 440

SENATE BILL NO. 2138

(Senators Lips, Robinson)
(Representative Stenehjem)

STATE EMPLOYEES COMPENSATION COMMISSION APPOINTMENT

AN ACT to amend and reenact section 54-06-25 of the North Dakota Century Code, relating to the appointment of members to the state employees compensation commission; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁹ **SECTION 1. AMENDMENT.** Section 54-06-25 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-06-25. State employees compensation commission - Appointment of members.

1. The state employees compensation commission shall make recommendations on appropriate levels of state employee compensation and fringe benefits. The commission may not consider conditions of employment other than salary and fringe benefit issues. The ~~commissioner of labor~~ central personnel division shall provide staff services for the commission.
2. The governor or the governor's designee is a member of the commission and serves as chairman. Four members of the legislative assembly appointed by the chairman of the legislative council are members of the commission. Four state employees are members of the commission, three of whom must be members of the classified service of the state and one of whom must be a member of the nonclassified service of the state. The ~~commissioner of labor~~ central personnel division shall conduct the election for the employee representatives. All elected commission members serve for a term of ~~two~~ four years and may be ~~reappointed or~~ reelected for additional terms of office. All appointed commission members serve for a term of two years and may be reappointed for additional terms of office. The state employee members' terms begin on ~~July~~ October first of the year they are elected. The terms of office of members who are members of the legislative assembly and the governor's designee begin on ~~July~~ October first of each odd-numbered year. ~~Of the initial state employees who are elected to the commission, one of the members of the classified service and the member of the nonclassified service must be elected for a one-year term and the other two elected state employees must be elected for a two-year term, and before~~ Before the conclusion of each ~~subsequent~~ term, an election must

¹⁹ Section 54-06-25 was also amended by section 24 of Senate Bill No. 2052, chapter 432.

be held to replace the two members whose terms will end in that year. The terms of those commission members elected on July 1, 1996, expire on September 30, 1999. No more than one employee from the same institution of higher education or agency may serve on the commission at the same time. If two or more employees from the same institution of higher education or agency appear on the ballot at the same time, the employee with the highest vote total is elected to the position. If a member of the commission moves to another agency where another current member of the commission is employed, then the moving member must resign. Vacancies on the commission must be filled by the person who received the next highest vote total in the previous election.

3. The commission shall meet at the call of the chairman as often as may be necessary, but at least once during each year of the biennium. The commission shall consider proper levels of compensation and fringe benefits for state employees and make its recommendations on these issues to the governor in time for consideration in preparation of the executive budget to be submitted to the next legislative assembly. The commission shall also submit its recommendations to the legislative council at the biennial meeting at which the legislative council receives the reports of its interim committees.
4. The members of the legislative assembly who are commission members are entitled to receive compensation from the legislative council for each day in attendance at commission meetings in the same manner as provided in section 54-35-10 for members of the legislative council and reimbursement from the legislative council for travel and other necessary expenses incurred in performing commission duties in the amounts provided for state employees under section 54-06-09. The state employee members of the commission are entitled to receive reimbursement for necessary expenses incurred in attending commission meetings at the rates provided for state employees under section 54-06-09 and may not be assessed any annual leave or loss of salary for attendance at meetings of the commission. The employing agency of state employee members shall pay their expenses.
5. Each member of the classified service may be a candidate for election to the state employees compensation commission. A member of the nonclassified service may be a candidate for election to the commission if the employee occupies a regularly funded and approved position. In order to vote for a candidate in the election to fill a vacancy on the commission, an employee must be a member of the classified service or must occupy a regularly funded and approved position. Student and temporary employees, elected state officials, and appointees of the governor are not eligible to serve on the commission, participate as a candidate for election to the commission, or vote for members of the commission. If after election to the commission, an employee moves from one type of service to another, that employee may continue serving on the commission until the regular expiration of that employee's term.
6. The ~~commissioner of labor~~ central personnel division shall ensure that a notice of an opening on the commission and the election is provided to an officer at each agency and institution. The officer at each agency and institution shall post the notice in a conspicuous place. The notice must include a statement of voter and candidate eligibility, the candidate

nomination requirements, the date of the election, and where to obtain the nomination petitions for filing.

7. In order to be placed on the commission ballot, an employee shall contact the ~~commissioner of labor~~ central personnel division for a petition form. The petition form must be returned to the ~~commissioner of labor~~ central personnel division no more than twenty calendar days after the publishing date of the notice by the ~~commissioner of labor~~ central personnel division with at least one hundred signatures of eligible state employees. Petition forms that are not complete, or are returned after the required date, must be declared void.
8. The ballot must be prepared by the ~~commissioner of labor~~ central personnel division and distributed to each agency and institution payroll officer. An officer of each agency and institution shall provide mailing labels for all qualified employees to the ~~commissioner of labor~~ central personnel division upon the ~~commissioner's~~ division's request. A ballot for the election must be distributed with each employee's payroll check on the employee's regularly scheduled payday.
9. Employees of the ~~commissioner of labor~~ central personnel division shall count the ballots following the final day that the ballots must be returned. Each candidate may have one overseer present at the ballot counting who may examine each ballot as to its sufficiency after the ballot has been counted. A candidate may act as that candidate's overseer. If a candidate wishes to designate a representative to act as that candidate's overseer, the candidate must provide a notarized authorization to the election committee at the counting of ballots. An overseer may act on behalf of more than one candidate; however, the overseer must show required authorization from each candidate represented. The overseer may question the decision of the ballot counters regarding a ballot immediately after the counting of the ballot. If questioned, the comments of the overseer must be heard. The ~~commissioner of labor~~ central personnel division or the ~~commissioner's~~ division's representative shall decide if the complaint is valid and whether the ballot will be accepted. The decision of the ~~commissioner~~ central personnel division or the ~~commissioner's~~ division's representative is final and must be given in writing. Once all ballots have been counted and all questions raised by the overseers have been decided by the ~~commissioner~~ central personnel division or the ~~commissioner's~~ division's representative, the election is closed and results must be declared final. The ~~commissioner of labor~~ central personnel division shall notify all candidates of the election results within ten working days of the election.

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

Approved March 25, 1997

Filed March 26, 1997

CHAPTER 441**SENATE BILL NO. 2187**

(Senators W. Stenehjem, Mathern, G. Nelson)
(Representatives Boucher, Dorso)

STATE EMPLOYEE TELEPHONE USE

AN ACT to create and enact a new section to chapter 54-06 of the North Dakota Century Code, relating to the use of state telephones by state appointed and elected officials and state employees; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-06 of the North Dakota Century Code is created and enacted as follows:

Use of state telephones by state officials and employees. Notwithstanding any other provision of law, an appointed or elected state official or a state employee may use a state telephone to receive or place a local call for essential personal purposes to the extent that use does not interfere with the functions of the official's or employee's agency, department, or institution. When an appointed or elected state official or state employee is away from the official's or employee's residence for official state business and long-distance tolls would apply for the official or employee to call the official's or employee's city of residence, the official or employee is entitled to make at least one long-distance call per day at state expense. Each state agency, department, or institution may establish guidelines defining reasonable and appropriate use of state telephones for essential personal purposes.

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

Approved March 25, 1997

Filed March 25, 1997

CHAPTER 442

HOUSE BILL NO. 1235 (Representative Wardner)

SECRETARY OF STATE DUTIES AND FEES

AN ACT to amend and reenact sections 54-09-02 and 54-09-04 of the North Dakota Century Code, relating to the duties of and fees charged by the secretary of state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-09-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-09-02. Duties of secretary of state. In addition to the duties prescribed by the constitution, the secretary of state shall:

1. ~~Attend every session of the legislative assembly for the purpose of receiving~~ Receive bills and resolutions ~~therefrom from every session of the legislative assembly,~~ and shall perform such other duties as may devolve upon the secretary of state by resolution of the two houses, or either of them.
2. Keep a register of and attest the official acts of the governor.
3. Affix the great seal with the secretary of state's attestation to commissions and other public instruments to which the official signature of the governor is required.
4. ~~Record in proper books and maintain records of all conveyances made to the state and all articles of incorporation filed in the secretary of state's office.~~
5. ~~Receive and record in the proper books~~ Record and maintain records of the official bond of any state official who furnishes in lieu of the bond furnished by the state bonding fund a bond by a duly authorized surety company.
6. ~~Take and file receipts~~ Maintain records for all books distributed by the secretary of state and direct the county auditor of each county to do the same as provided by law.
7. Furnish on demand to persons paying the fees therefor a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in the secretary of state's office.
8. ~~Keep a fee book in which must be entered~~ records of all the fees, commissions, and compensation of whatever nature or kind earned, collected, or charged by the secretary of state, with the date, name of payor, and the nature of the services in each case. ~~The book must be verified annually by affidavit of the secretary of state entered therein.~~

9. Biennially report to the governor with copies filed in the secretary of state's office as prescribed by section 54-06-04 all moneys received from any source for services performed, and accompany ~~such~~ the report with a detailed statement under oath of the manner in which the appropriations for the secretary of state's office have been expended during the preceding two fiscal years.
10. Immediately after the laws, resolutions, and journals of the legislative assembly are bound, distribute the laws, resolutions, and journals to the persons entitled thereto by law or rules of the senate and house of representatives.
11. Keep a ~~registry~~ records of cities as prescribed by law.
12. Indicate on each bill passed by the legislative assembly the date of filing in the secretary of state's office.
13. Perform all other duties as are prescribed by law.

SECTION 2. AMENDMENT. Section 54-09-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-09-04. Fees. The secretary of state, unless otherwise provided by law, shall charge and collect the following fees:

1. For a copy of any law, resolution, record, or other document or paper on file in the secretary of state's office, one dollar for every four pages or fraction thereof.
2. For affixing the signature of the secretary of state, certificate, or seal, or combination thereof to any document, ten dollars.
3. For filing a certificate of appointment of attorney, five dollars.
4. For any other document signed by the governor, except a commission, and attested by the secretary of state, five dollars.
5. For searching records and archives of the state, five dollars. For the purposes of this section, a search of records conducted by the secretary of state for which a fee must be collected includes the following:
 - a. A search of a filed document that is active or archived, an archived index, or an index of business name changes to identify specific information to satisfy a request;
 - b. A search of any record for which written verification of the facts of the search is required; and
 - c. For every search of records when the request for the search is contained in a list compiled by the requester.

The secretary of state may provide, at no charge, information from publications or reference materials published or maintained by the secretary of state and verbal confirmation of any element of information maintained in a computer data base.

6. For filing any paper not otherwise provided for, ten dollars.
7. For filing utility property transfers, five dollars, and issuing a certificate of filing, five dollars.
8. For sending a copy of a document by electronic transmission, one dollar for each page.
9. For filing any process, notice, or demand for service, twenty dollars.
10. For preparing any listing or compilation of any information recorded or filed in the office of the secretary of state, thirty-five dollars plus the actual cost for assembling and providing the information on the medium requested.

No member of the legislative assembly, and no state or county officer may be charged for any search relative to matters appertaining to duties of office, nor be charged any fee for a certified copy of any law or resolution passed by the legislative assembly relative to the person's official duties. All fees when collected must be paid by the secretary of state into the state treasury at the end of each month and placed to the credit of the state. Unless otherwise provided by statute law, the secretary of state shall retain a handling charge from filing fees tendered when a document submitted to the secretary of state under any law is rejected and not perfected. The handling charge is five dollars or fifty percent of the filing fee, whichever is greater, but may not exceed one hundred dollars. This section does not apply to fees submitted for filing in, or information obtained from, the computerized central notice system, to the computerized Uniform Commercial Code central filing data base, or to the computerized statutory liens data base.

Approved March 13, 1997
Filed March 13, 1997

CHAPTER 443

SENATE BILL NO. 2066

(Appropriations Committee)
(At the request of the State Auditor)

STATE AUDITOR CONTRACTS AND AUDITS

AN ACT to amend and reenact section 54-10-01 of the North Dakota Century Code, relating to payment of state auditor contracts and performance audit standards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-10-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-10-01. Powers and duties of state auditor. The state auditor shall:

1. Be vested with the duties, powers, and responsibilities involved in performing the postaudit of all financial transactions of the state government, detecting and reporting any defaults, and determining that expenditures have been made in accordance with law and appropriation acts.
2. Perform or provide for the audit of the general purpose financial statements and a review of the material included in the comprehensive annual financial report of the state and perform or provide for the audits and reviews of state agencies, including occupational or professional boards provided for by law. The state auditor shall audit or review each state agency once every two years. The state auditor shall determine the contents of the audits and reviews of state agencies. The state auditor may conduct any work required by the federal government. The state auditor shall charge an amount equal to the cost of the audit and other services rendered by the state auditor to all agencies that receive and expend moneys from other than the general fund. This charge may be reduced for any agency that receives and expends both general fund and nongeneral fund moneys. ~~The state auditor shall require any agency in the executive branch of government, which includes an institution of higher education, to pay for a contract for the audit or review of that agency. Except for an audit or review of an occupational or professional board, the state auditor shall execute any contract under this subsection.~~ The governing board of any occupational or professional board shall provide for an audit once every two years by a certified public accountant or licensed public accountant who shall submit the audit report to the state auditor's office. If the report is in the form and style as prescribed by the state auditor, the state auditor may not audit that board. Alternatively, an occupational or professional board may request the state auditor to do its audit, and if the state auditor agrees to do so, the state auditor shall deposit the fees charged to the occupational or professional board into the state auditor operating account. Audits and reviews may be conducted at more frequent intervals if requested by the governor or legislative audit and fiscal review committee.

3. Perform or provide for performance audits of state agencies as determined necessary by the state auditor or the legislative audit and fiscal review committee. A performance audit ~~must include reviewing elements of compliance, economy and efficiency, and program results to determine whether an agency is complying with applicable laws and legislative intent and is managing its resources efficiently, and whether the agency's programs are achieving desired results~~ must be done in accordance with generally accepted auditing standards applicable to performance audits.
4. For the audits and reviews the state auditor is authorized to perform or provide for under this section, the audit or review may be provided for by contract with a private certified or licensed public accountant or other qualified professional. If the state auditor determines that the audit or review will be done pursuant to contract, the state auditor, except for occupational or professional boards, shall execute the contract, and any executive branch agency, including higher education institutions, shall pay the fees of the contractor.
5. Be responsible for the above functions and report thereon to the governor and the secretary of state in accordance with section 54-06-04 or more often as circumstances may require.
5. 6. Perform all other duties as prescribed by law.

Approved March 19, 1997

Filed March 19, 1997

CHAPTER 444

SENATE BILL NO. 2047

(Legislative Council)
(Legislative Audit and Fiscal Review Committee)
(Senators Solberg, Mutch)
(Representatives Byerly, Maragos, Nichols, Timm)

POLITICAL SUBDIVISION AUDITS

AN ACT to amend and reenact sections 54-10-13, 54-10-14, 54-10-15, and 54-40.1-05 of the North Dakota Century Code, relating to audits of political subdivisions, regional planning councils, and soil conservation districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-10-13 of the North Dakota Century Code is amended and reenacted as follows:

54-10-13. Political subdivisions - Audits - State auditor powers. The state auditor shall perform audits of political subdivisions pursuant to section 54-10-14 unless otherwise requested by the governing board, ordered by the governor or the legislative audit and fiscal review committee, or on petition pursuant to section 54-10-15, or at the discretion of the state auditor for alleged improprieties.

SECTION 2. AMENDMENT. Section 54-10-14 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-10-14. Political subdivisions - Audits - Fees - Alternative audits and reports. The state auditor shall audit the following political subdivisions once every two years, except as provided in this section or otherwise by law:

1. Counties.
2. Cities.
3. Park districts.
4. School districts.
5. ~~Firemen's~~ Firefighters relief associations.
6. Airport authorities.
7. Public libraries.
8. Water resource districts.
9. Garrison diversion conservancy district.
10. Rural fire protection districts.
11. Special education districts.

12. Area vocational and technology centers.
13. Correction centers.
14. Recreation service districts.
15. Weed boards.
16. Irrigation districts.
17. Rural ambulance service districts.
18. ~~West river water supply district.~~
19. Southwest water authority.
19. Regional planning councils.
20. Soil conservation districts.

The state auditor shall charge the political subdivision an amount equal to the fair value of the audit and any other services rendered. ~~Fees~~ The political subdivision audited shall pay to the state treasurer the fees for the audit performed by the state auditor ~~must be paid to the state treasurer by the political subdivision audited.~~ The state treasurer shall deposit the fees ~~must be deposited~~ in the state auditor operating account. Expenses relating to political subdivision audits must be paid from the state auditor operating account, within the limits of legislative appropriation.

~~The state auditor may in~~ In lieu of conducting an audit every two years, the state auditor may require annual reports from school districts with less than one hundred enrolled students, cities with less than three hundred population, and other political subdivisions subject to this section, or otherwise provided by law, with less than one hundred thousand dollars of annual receipts. The reports must contain the financial information required by the state auditor. The state auditor ~~may~~ may also may make ~~such any~~ any additional examination or audit ~~as deemed~~ determined necessary in addition to the annual report. When a report is not filed, the state auditor may charge the political subdivision an amount equal to the fair value of the additional examination or audit and any other services rendered. The state auditor may charge a political subdivision a fee not to exceed fifty dollars an hour for the costs of reviewing the annual report.

A political subdivision ~~may~~, at the option of its governing body, may be audited by a certified public accountant or licensed public accountant rather than by the state auditor. The public accountant shall comply with generally accepted government auditing standards for audits of political subdivisions. The report must be in the form and content required by the state auditor. The number of copies of the audit report requested by the state auditor must be filed with the state auditor when the public accountant delivers the audit report to the political subdivision. The state auditor shall review the audit ~~reports~~ report to determine if the ~~reports are~~ report is in the required form and ~~have~~ has the required content, and if the audit meets generally accepted government auditing standards. The state auditor ~~may~~ also may periodically review the public accountant's workpapers to determine if the audit meets generally accepted government auditing standards. If the ~~reports are~~ report is in the required form and ~~have~~ has the required content, and the ~~reports~~ report and workpapers comply with generally accepted government auditing

standards, the state auditor shall accept the audit report. The state auditor may charge the political subdivision a fee of up to fifty dollars an hour, but not to exceed five hundred dollars per review, for the related costs of reviewing the audit report and workpapers.

A political subdivision may not pay a public accountant for an audit until the state auditor has accepted the audit. However, a political subdivision may make progress payments to the public accountant. A political subdivision shall retain twenty percent of any progress payment until the audit report is accepted by the state auditor.

The state auditor may require the correction of any irregularities, objectionable accounting procedures, or illegal actions on the part of the governing board, officers, or employees of the political subdivision disclosed by the audit report or workpapers, and failure to make the corrections shall result in audits being resumed by the state auditor until the irregularities, objectionable accounting procedures, or illegal actions are corrected.

SECTION 3. AMENDMENT. Section 54-10-15 of the North Dakota Century Code is amended and reenacted as follows:

54-10-15. Audits of political subdivisions by order of governor or the legislative audit and fiscal review committee, or upon petition. The state auditor, by duly appointed deputy auditors or other authorized agents, shall audit or review the books, records, and financial accounts of any political subdivision when ordered by the governor or the legislative audit and fiscal review committee, requested by the governing board, or upon petition of at least thirty-five percent of the qualified electors of any political subdivision enumerated in section 54-10-14 voting for the office of governor at the preceding general election or, in the case of school districts, upon petition of at least thirty-five percent of the qualified electors voting at the preceding school board election. Fees for the audits must be paid in accordance with the provisions of section 54-10-14.

SECTION 4. AMENDMENT. Section 54-40.1-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-40.1-05. Reports. Each regional council shall prepare an annual report within sixty one hundred twenty days after the end of each fiscal year. Copies ~~The regional council shall submit copies~~ of the report ~~must be submitted~~ to the participating units of general local government, to the governor or the governor's designee, and to members of the legislative assembly in each region. To the extent practicable, the report must include projects completed or in progress and sources of funding.

Approved April 11, 1997
Filed April 11, 1997

CHAPTER 445

SENATE BILL NO. 2023

(Legislative Council)
(Budget Section)
(Senators Nething, Goetz)
(Representatives Dalrymple, Hausauer)

BUDGET SECTION POWERS AND DUTIES

AN ACT to amend and reenact section 50-06.4-04, subsection 3 of section 50-24.1-01.3, and section 54-16-04 of the North Dakota Century Code, relating to appropriation authority and the powers and duties of the budget section of the legislative council; and to repeal sections 52-02.1-05, 54-14-01.1, and 57-01-11.1 of the North Dakota Century Code, chapter 63 of the 1989 Session Laws, and section 11 of chapter 22 of the 1993 Session Laws, relating to the office of the budget and the powers and duties of the budget section of the legislative council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-06.4-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-06.4-04. Authority to accept and expend grants, gifts, and services - ~~Continuing appropriation - Budget section approval.~~ The department may apply for and accept any funds, grants, gifts, or services made available for the purpose of providing or coordinating services to persons with traumatic brain injury by any federal agency or department or any private agency or individual. Funds received by the department under this section must be deposited in the state treasury in a special fund designated as the traumatic brain injury fund and may be spent within the limits of legislative appropriation. ~~There is hereby appropriated out of the traumatic brain injury fund any moneys that may become available under this section for the purposes of carrying out this chapter. No moneys may be expended from the fund without prior approval of the budget section of the legislative council.~~

SECTION 2. AMENDMENT. Subsection 3 of section 50-24.1-01.3 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The state treasurer shall establish a fund for the receipt of any civil money penalties imposed under subsection 1. Any civil money penalty paid to the department of human services under subsection 1 must be deposited in that fund; ~~and is hereby appropriated to the department of human services, subject to the approval of the budget section of the legislative council,~~ and, subject to the limits of legislative appropriation, may be expended for the sole purpose of the protection of the health or property of residents of nursing facilities that the state or federal government finds deficient.

SECTION 3. AMENDMENT. Section 54-16-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-16-04. May order transfer of moneys between funds - Line item transfers - Order may draw from state treasury. A state officer may present to the emergency commission an itemized, verified petition requesting approval of a transfer of spending authority from the state contingencies appropriation, a transfer of money or spending authority between funds or line items, or expenditure of federal funds. The emergency commission shall request and receive information from the director of the office of management and budget regarding the petition. If the emergency commission finds that an emergency exists, the emergency commission may order money or spending authority transferred from one fund or line item to another fund or line item belonging to or appropriated for the same institution or board or the same state enterprise, may order a transfer of spending authority from the state contingencies appropriation, may authorize expenditure of federal funds, or in an extremity may authorize money to be drawn from the state treasury to meet the emergency until the legislative assembly can make an appropriation available. The following transfers may not be authorized by the emergency commission without approval by the budget section of the legislative council: ;

1. ~~A transfer of spending authority from the state contingencies appropriation after the aggregate amount transferred from that appropriation during the biennium exceeds five hundred thousand dollars.~~
2. A transfer of moneys or spending authority which would eliminate or make impossible the accomplishment of a program or objective funded by the legislative assembly.
3. 2. A transfer exceeding fifty thousand dollars from one fund or line item to another fund or line item, unless the transfer is necessary to comply with a court order or to avoid:
 - a. An imminent threat to the safety of people or property due to a natural disaster or war crisis; or
 - b. An imminent financial loss to the state.

SECTION 4. REPEAL. Sections 54-14-01.1 and 57-01-11.1 of the North Dakota Century Code, section 52-02.1-05 of the 1995 Supplement to the North Dakota Century Code, chapter 63 of the 1989 Session Laws, and section 11 of chapter 22 of the 1993 Session Laws are repealed.

Approved April 1, 1997
Filed April 2, 1997

CHAPTER 446**SENATE BILL NO. 2347**

(Senator Nething)
(Representative Dalrymple)

STATE AGENCY DISASTER BORROWING

AN ACT to authorize the adjutant general to borrow funds to respond to disasters; to create and enact a new section to chapter 54-16 of the North Dakota Century Code, relating to authorizing state agencies to borrow funds for disasters; to amend and reenact section 54-16-08 of the North Dakota Century Code, relating to state contingencies appropriation; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-16 of the North Dakota Century Code is created and enacted as follows:

Authority to borrow funds for a disaster - Continuing appropriation. Any board, agency, commission, or officer of the state, subject to the approval of the emergency commission, may borrow moneys from the Bank of North Dakota for the purpose of responding to a disaster within the state as declared by the governor pursuant to chapter 37-17.1. The amount of moneys borrowed is limited to the amount of any estimated federal reimbursement for repair, recovery, or response relating to a disaster within the state, unless the state contingencies appropriation is inadequate to pay the estimated state share of the costs, then moneys may be borrowed up to one hundred percent of the costs incurred by the agency. Any interest payments on the funds borrowed must be paid from funds available to the agency from the state contingencies appropriation as authorized by the emergency commission or other funds as authorized by the emergency commission. Any moneys borrowed from the Bank of North Dakota pursuant to this section are hereby appropriated and may be spent by the board, agency, commission, or officer of this state for the repair, recovery, or response relating to a disaster within the state. If it appears to the borrower that at the end of the biennium the amount available to repay the amount borrowed plus interest is insufficient to totally repay the Bank of North Dakota, the borrower shall request from the legislative assembly a deficiency appropriation sufficient for the repayment of the amount borrowed plus interest.

SECTION 2. AMENDMENT. Section 54-16-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-16-08. State contingencies appropriation. The legislative assembly may appropriate moneys to the office of management and budget for state contingencies as provided in this chapter. Any state agency, board, commission, or officer authorized by the emergency commission to spend moneys from the state contingencies appropriation must return any unspent moneys of the appropriation within the biennium that it was authorized.

SECTION 3. Adjutant general - Authority to borrow funds. The adjutant general may borrow funds from the Bank of North Dakota for the purpose of responding to a disaster within the state as declared by the governor pursuant to

chapter 37-17.1 in an amount not to exceed \$575,000 for the period beginning with the effective date of this Act and ending June 30, 1997. The Bank of North Dakota loans must be repaid from federal reimbursements relating to the disaster or other funds available to the adjutant general or by utilizing other procedures as authorized by the governor. Any accrued interest on the loans must be repaid from funds authorized to be spent from the state contingencies appropriation available to the adjutant general or other funds as authorized by the emergency commission.

SECTION 4. APPROPRIATION. There is hereby appropriated from special funds, derived from loan proceeds authorized under section 3 of this Act, the sum of \$575,000, or so much of the sum as may be necessary, to the adjutant general for the purpose of repair, recovery, or response relating to a disaster within the state as declared by the governor pursuant to chapter 37-17.1 for the period beginning with the effective date of this Act and ending June 30, 1997. The adjutant general may transfer appropriation authority provided in this section to the various line items of section 1 of chapter 39 of the 1995 Session Laws as authorized by the director of the office of management and budget to restore funds already spent for responding to the disaster within the state.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved February 17, 1997
Filed February 17, 1997

CHAPTER 447**SENATE BILL NO. 2077**

(Political Subdivisions Committee)

(At the request of the State Housing Finance Agency)

HOUSING FINANCE AGENCY GRANTS

AN ACT to create and enact a new subsection to section 54-17-07.3, relating to housing grants by the housing finance agency; and to amend and reenact subsection 1 of section 54-17-07.3 of the North Dakota Century Code, relating to financial assistance authorized under the housing finance agency's home mortgage finance program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 54-17-07.3 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Home mortgage finance program. A program or programs to provide financing or refinancing of loans made by lenders, including second mortgage loans and leasehold mortgage loans on tribal trust or other reservation lands, and leasehold mortgage loans that are insured or guaranteed through an affordable housing program, to persons or families of low and moderate income for the purchase or substantial rehabilitation of owner occupied, single-family residential dwelling units, which includes mobile homes and manufactured housing.

SECTION 2. A new subsection to section 54-17-07.3 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

Housing grant program. A program or programs to provide grants other than those authorized by section 54-17-07.6 to encourage and promote housing availability for persons of low or moderate income.

Approved March 5, 1997
Filed March 6, 1997

CHAPTER 448

SENATE BILL NO. 2111

(Appropriations Committee)

(At the request of the Industrial Commission)

STUDENT LOAN BONDS

AN ACT to amend and reenact sections 54-17-24, 54-17-25, and 54-17-26 of the North Dakota Century Code, relating to the student loan trust and to the refunding and sale of bonds issued by the industrial commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-17-24 of the North Dakota Century Code is amended and reenacted as follows:

54-17-24. State trusts created. The industrial commission is hereby authorized and directed to acquire and to hold in ~~separate~~ one or more trusts (1) all unpaid United States government guaranteed or reinsured student loans and (2) North Dakota guaranteed student loans, belonging to the state of North Dakota or to any of its agencies, departments, or institutions which may be endorsed or assigned to it, such guaranteed student loans held in the trusts as security for bonds of the state to be issued as and in the manner the commission shall decide. All guaranteed student loans so held in the trusts and the collections therefrom and the increments thereto must be held in special funds as the source of payment of bonds of North Dakota to be issued, none of which bonds may constitute indebtedness of the state. The term "student" for the purposes of this section and section 54-17-25 includes a parent borrower under chapter 15-62.1.

²⁰ **SECTION 2. AMENDMENT.** Section 54-17-25 of the North Dakota Century Code is amended and reenacted as follows:

54-17-25. Bonds authorized - Establishment of secondary market program. Whenever the industrial commission decides that it is in the public interest to diminish the investment of state funds in United States government guaranteed or reinsured or North Dakota guaranteed student loans, that it will be difficult to divest the state of appreciable amounts of such loans by piecemeal offering to the investing and saving public, that business conditions are favorable to a state-sponsored program to consolidate state-held student loans, and to enlarge private participation in such loans, the commission may by plenary resolution duly adopted in accordance with the provisions hereof authorize preparation, sale, and issuance of revenue bonds of North Dakota in such amounts and at such times and in such form, which may include the issuance of bonds the interest income on which is subject to federal income taxes, as the commission shall determine to be for the public good. The commission may refund and refinance the bonds from time to time as often as it is advantageous and in the public interest to do so. The bonds shall be a paramount charge upon a sufficient designated portion of the resources of

²⁰ Section 54-17-25 was also amended by section 9 of House Bill No. 1155, chapter 94.

the student loan trusts, subject only to necessary administrative expenses of the trusts duly appropriated out of the interest earning resources thereof. The bonds may bear such rate or rates of interest as the commission may provide. The bonds must have all of the qualities and incidents of negotiable paper and are not subject to taxation by the state of North Dakota or by any county, municipality, or political subdivision therein. The bonds must be payable solely out of the separate resources generated respectively from collection of payments on and earnings and proceeds of (1) United States government guaranteed or reinsured or (2) North Dakota guaranteed student loans, and must respectively so recite. They are not indebtedness of the state of North Dakota or of any agency, board, department, or officer or agent thereof. Without limiting the foregoing, the commission may request the organization of a nonprofit corporation meeting the requirements of the Internal Revenue Code of 1954, as amended and redesignated as the Internal Revenue Code of 1986 [Pub. L. 99-54], and as it may be amended from time to time, and enter into one or more agreements with such corporation providing for the establishment of a secondary market program in the state of North Dakota for the acquisition by the corporation of such loans made pursuant to title IV, part B of the Higher Education Act of 1965, as amended, as the commission shall, in its discretion, deem advisable.

SECTION 3. AMENDMENT. Section 54-17-26 of the North Dakota Century Code is amended and reenacted as follows:

54-17-26. Bonds eligible for investment - Sale of bonds. Bonds issued under section 54-17-25 may be acquired and held by banks and by savings and loan associations of this state as well as by all public trust funds. They may be issued and sold at public or private sale or by negotiation as the industrial commission may direct and the commission may make, enter into, and enforce all contracts or agreements necessary, convenient, or desirable for the purposes of the commission or pertaining to any purchase or sale of the bonds or other investments or to the performance of its duties and execution or carrying out of any of its powers under section 54-17-25.

Approved March 11, 1997
Filed March 13, 1997

CHAPTER 449

SENATE BILL NO. 2398

(Senators Andrist, Christmann, Krebsbach, Lindaas, Wanzek)

FARM FINANCING ASSISTANCE

AN ACT to create and enact six new sections to chapter 54-17 of the North Dakota Century Code, relating to the tax-exempt financing of farmland, livestock, and farm equipment through the industrial commission; and to amend and reenact subdivision I of subsection 1 of section 28-32-01 of the North Dakota Century Code, relating to the definition of an administrative agency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹ **SECTION 1. AMENDMENT.** Subdivision I of subsection 1 of section 28-32-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- I. The industrial commission with respect to the activities of the Bank of North Dakota, the North Dakota housing finance agency, the North Dakota municipal bond bank, ~~and~~ the North Dakota mill and elevator association, and the North Dakota farm finance agency.

SECTION 2. A new section to chapter 54-17 of the North Dakota Century Code is created and enacted as follows:

Definitions. As used in sections two through seven of this Act:

1. "First-time farmer" means an individual who is a North Dakota resident who has not at any time had any direct or indirect ownership interest in substantial farmland in the operation of which the individual materially participated, who will be the principal user of the farmland, and who will materially and substantially participate on the farm of which the land is a part in the operation of the farm.
2. "Substantial farmland" means any parcel of land unless the parcel is smaller than thirty percent of the median size of a farm in the county in which the parcel is located and does not at any time while held by the individual have a fair market value in excess of one hundred twenty-five thousand dollars.

SECTION 3. A new section to chapter 54-17 of the North Dakota Century Code is created and enacted as follows:

²¹ Section 28-32-01 was also amended by section 7 of Senate Bill No. 2033, chapter 182; section 8 of Senate Bill No. 2336, chapter 157; section 1 of House Bill No. 1042, chapter 278; section 6 of Senate Bill No. 2045, chapter 115; section 1 of House Bill No. 1183, chapter 451; section 2 of House Bill No. 1158, chapter 277; and section 24 of Senate Bill No. 2046, chapter 51.

Farm finance program. Acting as the farm finance agency, the industrial commission may establish the first-time farmer finance program to encourage first-time farmers to enter into and remain in the livelihood of agriculture and to provide first-time farmers a source of financing at favorable rates and terms generally not available to them. The first-time farmer finance program is established to allow first-time farmers to utilize the tax-exempt financing provided for in the Internal Revenue Code of 1986, and any amended regulations adopted thereunder.

SECTION 4. A new section to chapter 54-17 of the North Dakota Century Code is created and enacted as follows:

First-time farmer participation. The first-time farmer finance program is limited as required by applicable provisions of the Internal Revenue Code of 1986 and any regulations adopted thereunder, as amended, and under the first-time farmer finance program:

1. Financing may not be made to individuals with a net worth of more than two hundred thousand dollars;
2. Financing may not be made to an individual in an aggregate amount in excess of two hundred fifty thousand dollars; and
3. Financing may only be made to first-time farmers for the acquisition of land in the state of North Dakota, livestock, farm improvements, and equipment to be used for farming purposes.

SECTION 5. A new section to chapter 54-17 of the North Dakota Century Code is created and enacted as follows:

Financing. Financing may be accomplished by the issuance of evidences of indebtedness by the industrial commission acting as the farm finance agency and the entering into of a financing agreement between the industrial commission acting as the farm finance agency and lenders or individuals. Any financing agreement entered into between the industrial commission and any lender or individual is payable as to principal and interest only from the payments made thereon by the first-time farmer, and the financing agreement and any evidence of indebtedness may not constitute a debt of the state of North Dakota or any agency or instrumentality thereof within the meaning of any constitutional or statutory debt limit.

SECTION 6. A new section to chapter 54-17 of the North Dakota Century Code is created and enacted as follows:

Policies. Before exercising any of its powers as the farm finance agency pursuant to subsection 2 of section 54-17-09, the industrial commission shall adopt policies and rules relating to any or all of the following:

1. Procedures and documentation for the submission of requests for financing; and
2. Provisions necessary for compliance with the Internal Revenue Code of 1986 and any regulations adopted thereunder, as amended.

SECTION 7. A new section to chapter 54-17 of the North Dakota Century Code is created and enacted as follows:

Financing exempt from taxation - Exception. Evidences of indebtedness issued under the provisions of the first-time farmer finance program, and the interest therefrom, is exempt from any taxes of the state, except inheritance, estate, and transfer taxes.

Approved March 7, 1997

Filed March 7, 1997

CHAPTER 450**HOUSE BILL NO. 1133**

(Natural Resources Committee)

(At the request of the Industrial Commission)

LIGNITE RESEARCH FUND APPLICATIONS

AN ACT to amend and reenact section 54-17.5-03 of the North Dakota Century Code, relating to evaluating applications for funding from the lignite research fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-17.5-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-17.5-03. Priority projects, processes, and activities. In evaluating applications for funding from the lignite research fund for North Dakota's lignite research, development, and marketing program, the industrial commission and lignite research council shall give priority to those projects, processes, or activities that will preserve existing jobs and production, which will create the greatest number of new jobs and most additional lignite production and economic growth potential in coal-producing counties or those counties with recoverable coal reserves, which will attract matching private industry investment equal to at least fifty percent or more of the total cost, and which will result in development and demonstration of a marketable lignite product or products with a high level of probability of rapid near term commercialization ~~by the year 2000 or before~~. For marketing applications, priority must be given to those projects, processes, or activities that develop baseline information, implement specific marketing strategies, and otherwise contribute to the effective marketing of lignite and its products ~~by the year 2000 or before~~. For reclamation applications, priority must be given to those projects, processes, or activities that will reduce unnecessary regulatory costs and assist in effectively reclaiming surface mined land to its original or better productivity as soon as possible. Any projects, activities, or processes selected by the commission for funding must achieve the priorities and purposes of the program, must have undergone technical review and be determined to have technical merit, must have generated matching private industry investment, and must have received a favorable lignite research council recommendation.

Approved March 7, 1997

Filed March 10, 1997

CHAPTER 451

HOUSE BILL NO. 1183

(Representative DeKrey)
(Senator B. Stenehjem)

CAPITOL GROUNDS CONDUCT RULES

AN ACT to amend and reenact subdivision a of subsection 1 of section 28-32-01 and section 54-21-18 of the North Dakota Century Code, relating to adoption of administrative rules concerning conduct on the state capitol grounds; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²² **SECTION 1. AMENDMENT.** Subdivision a of subsection 1 of section 28-32-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. The office of management and budget except with respect to rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the state building code as authorized or required under section 54-21.3-03, rules relating to the Model Energy Code as required under section 54-21.2-03, rules relating to the central personnel system as authorized under section 54-44.3-07, rules relating to state purchasing practices as required under section 54-44.4-04, rules relating to records management as authorized or required under chapter 54-46, and rules relating to the central microfilm unit as authorized under chapter 54-46.1.

SECTION 2. AMENDMENT. Section 54-21-18 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-21-18. Custody of office building - Considered part of capitol building - Director has control of public property - Rules - Penalty. The director of the office of management and budget shall control, manage, and maintain the state office building. The building must be considered a part of the state capitol building within the meaning of statutes relating to the custody, maintenance, and control of the state capitol building and grounds, and within the meaning of statutes requiring state departments or agencies to maintain their offices in the state capitol building.

²² Section 28-32-01 was also amended by section 1 of Senate Bill No. 2398, chapter 449; section 7 of Senate Bill No. 2033, chapter 182; section 8 of Senate Bill No. 2336, chapter 157; section 1 of House Bill No. 1042, chapter 278; section 6 of Senate Bill No. 2045, chapter 115; section 2 of House Bill No. 1158, chapter 277; and section 24 of Senate Bill No. 2046, chapter 51.

Except as otherwise provided by law, the director ~~shall have~~ of the office of management and budget has charge and control of the executive mansion, the capitol, and the park and public grounds connected therewith. Except as provided by sections 39-10-48 and 39-10-50, the director may adopt rules to promote the health, safety, and general welfare, to prohibit disturbances and disorderly assemblies, to keep the peace, and to regulate nuisances on the capitol grounds and in any of the buildings located on the capitol grounds. The rules may include regulation of public assemblies and accessibility to the buildings and grounds, obstructions, fees, insurance, forms, indemnification by users, and waiver of insurance and indemnity requirements by the director. A person who violates a rule adopted by the director under this section is guilty of an infraction.

Approved April 1, 1997
Filed April 2, 1997

CHAPTER 452

HOUSE BILL NO. 1162

(Representative Maragos)

(Senator Nalewaja)

(At the request of the Department of Corrections and Rehabilitation)

CRIME VICTIMS COMPENSATION CLAIMS AND BENEFITS

AN ACT to create and enact three new subsections to section 54-23.4-10 of the North Dakota Century Code, relating to closure of crime victims compensation claims; to amend and reenact sections 54-23.4-01, 54-23.4-03, 54-23.4-06, 54-23.4-11, and 54-23.4-12 of the North Dakota Century Code, relating to definitions, award of benefits, attorney's fees, and subrogation for purposes of crime victims compensation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-23.4-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-23.4-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Bodily injury" means any harm that requires medical treatment and results in economic loss and includes pregnancy and nervous shock.
2. "Claimant" means a victim, a dependent of a deceased victim, or a representative of either, who claims compensation under this chapter.
3. "Collateral source" means a source of benefits or advantages for economic loss otherwise reparable under this chapter which the claimant has received, or which is readily available to the claimant. ~~Social service benefits are not a collateral source unless the claimant was receiving these benefits prior to the injury.~~ The first twenty-five thousand dollars of a life insurance policy are not a collateral source if they are payable to a dependent beneficiary or to a parent, legal guardian, or conservator of a dependent victim.
4. "Criminally injurious conduct" means conduct that ~~occurs in or outside this state~~, results in bodily injury or death, and is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct was a minor or lacked capacity to commit the crime ~~under the laws of this state~~. The term includes an act of terrorism, as defined under Public Law No. 102-572 [106 Stat. 4506; 18 U.S.C. 2331], committed outside of the United States against a resident of this state. The term does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle except when intended to cause personal injury or death or when the division determines that the conduct ~~arose out of the use of intoxicating liquor or controlled substances as provided in section 39-08-01 or the conduct was followed by failure to stop or to give information and render aid as~~

provided in sections ~~39-08-04~~ and ~~39-08-06~~ was in violation of section 12.1-16-02, 12.1-16-03, 39-08-01, 39-08-03, 39-08-04, or 39-08-06.

5. "Dependent" means a natural person wholly or partially dependent upon a victim for care or support and includes a child of a victim born after the victim's death.
6. "Division" means the division of adult services of the department of corrections and rehabilitation.
7. "Economic loss" means economic detriment consisting only of allowable expense, work loss, replacement services loss, and, if injury causes death, dependent's economic loss and dependent's replacement services loss. Noneconomic detriment is not loss. The term includes economic detriment caused by pain and suffering or physical impairment.
 - a. "Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations required due to the injury, including those for medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care. The term includes a total charge not in excess of ~~one three thousand five hundred~~ one thousand five hundred dollars for expenses in any way related to funeral, cremation, and burial. The term does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semiprivate accommodations, unless the excess represents costs of other accommodations that are medically required.
 - b. "Dependent's economic loss" means loss after a victim's death of contributions of things of economic value to a victim's dependent, not including services the dependent would have received from the victim if the victim had not suffered the fatal injury, less expenses of the dependent avoided by reason of the victim's death.
 - c. "Dependent's replacement services loss" means loss reasonably incurred by a dependent after a victim's death in obtaining ordinary and necessary services in lieu of those the victim would have performed for the dependent's benefit if the victim had not suffered the fatal injury, less expenses of the dependent avoided by reason of the victim's death and not subtracted in calculating dependent's economic loss.
 - d. "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary damage.
 - e. "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the victim would have performed, not for income but for the benefit of the victim or the victim's family, if the victim had not been injured.
 - f. "Work loss" means loss of income from work the victim would have performed if the victim had not been injured, and expenses reasonably incurred by the victim in obtaining services in lieu of those the victim would have performed for income, reduced by any

income from substitute work actually performed by the victim or by income the victim would have earned in available appropriate substitute work the victim was capable of performing but unreasonably failed to undertake.

8. "Victim" means a person who suffers bodily injury or death as a result of criminally injurious conduct, the good faith effort of any person to prevent criminally injurious conduct, or the good faith effort of any person to apprehend a person suspected of engaging in criminally injurious conduct. The term includes a resident of this state who is injured or killed by an act of terrorism, as defined under Public Law No. 102-572 [106 Stat. 4506; 18 U.S.C. 2331], committed outside of the United States. The term does not mean a person who suffers bodily injury or death as a result of operating a motor vehicle, when, at the time of the injury or death, the person was not in compliance with applicable state laws and rules concerning motor vehicle insurance coverage and the person was at least partially at fault for causing the accident.

SECTION 2. AMENDMENT. Section 54-23.4-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-23.4-03. No award paid to inmates. The division may not make an award of any kind under this chapter to a victim convicted of a crime and injured while confined in ~~any state, county, or city~~ a jail, prison, or other correctional facility.

SECTION 3. AMENDMENT. Section 54-23.4-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-23.4-06. Application for compensation - Awards - Limitations on awards.

1. An applicant for an award of compensation shall apply in writing in a form that conforms substantially to that prescribed by the division. If a resident of this state is a victim of criminally injurious conduct, but the criminally injurious conduct occurred outside the geographical boundaries of this state, the resident has the same rights under this chapter as if the criminally injurious conduct occurred within this state upon a showing that the state, territory, country, or political subdivision of the country in which the criminally injurious conduct occurred does not have a crime victims compensation law which covers the bodily injury or death of the victim.
2. A claim for compensation must be filed within one year ~~after the date of injury or death. When the division cannot determine with certainty the date of injury, then the date of injury is the first date that a reasonable person should have known that the injury resulted from criminally injurious conduct from the date the criminally injurious conduct was reported to a law enforcement officer.~~ The division may extend the time for filing when if it determines that the interests of justice so require. There is no appeal from a decision of the division not to extend the filing time, not to reopen, or not to reinvestigate a claim.
3. Compensation may not be awarded to a claimant who is the offender or an accomplice of the offender, nor to any claimant if the award would unjustly benefit the offender or an accomplice.

4. Compensation may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within seventy-two hours after its occurrence or the division finds there was good cause for the failure to report within that time. In the case of child abuse or sexual molestation of a child, the criminally injurious conduct must be reported to a law enforcement officer within three years after the child reaches the age of majority.
5. The division, upon finding that the claimant has not fully cooperated with appropriate law enforcement agencies, may deny, reconsider, or reduce an award of compensation.
6. Compensation otherwise payable to a claimant must be reduced or denied:
 - a. To the extent the economic loss upon which the claim is based is recouped from other persons, including collateral sources;
 - b. To the extent the division deems reasonable because of the contributory misconduct of the claimant or of a victim on whose behalf compensation is claimed; and
 - c. To the extent the division deems reasonable when it is determined that a victim was under the influence of an alcoholic beverage or a controlled substance at the time the criminally injurious conduct occurred and the victim's intoxication was a factor causing the criminally injurious conduct.
7. Compensation for work loss, replacement services loss, dependent's economic loss, and dependent's replacement services loss may not exceed three hundred dollars per week.
8. Compensation payable to a victim and to all other claimants sustaining economic loss because of injury to or death of that victim may not exceed twenty-five thousand dollars in the aggregate. If a resident of this state is the victim of criminally injurious conduct outside the geographical boundaries of this state and the total amount of crime victims compensation benefits payable where the criminally injurious conduct occurred is less than twenty-five thousand dollars, the division may pay additional compensation to the victim. The maximum additional compensation the division may pay is the difference between twenty-five thousand dollars and the total amount of crime victims compensation benefits payable where the criminally injurious conduct occurred.

SECTION 4. Three new subsections to section 54-23.4-10 of the 1995 Supplement to the North Dakota Century Code are created and enacted as follows:

A claim for crime victims compensation benefits is presumed closed if the division has not paid any benefit or received a demand for payment of benefits for a period of five years from the date a payment was last made on a claim. A claim that is presumed closed may not be reopened for payment of any further benefits unless the presumption is rebutted by a preponderance of the evidence that the criminally injurious conduct is the principal cause of the current symptoms.

A claim for crime victims compensation benefits must be closed ten years after benefits have last been paid and may not be reopened.

This section applies to all claims for crime victims compensation benefits, irrespective of the date of the criminally injurious conduct.

SECTION 5. AMENDMENT. Section 54-23.4-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-23.4-11. Attorney's fees. ~~As part of an order, the~~ The division shall determine and award reasonable attorney's fees, commensurate with services rendered, to be paid by the state to the attorney representing the claimant. ~~Additional attorney's fees may be awarded by a court in the event of review. Attorney's fees may be denied on a finding that the claim or appeal is frivolous or that the appeal was unsuccessful if the claimant prevails after a petition for reconsideration or rehearing under section 28-32-14 from an order reducing or denying crime victims compensation benefits. A district court may award attorney's fees in an appeal pursuant to section 28-32-15 if the claimant prevails on appeal from an order reducing or denying benefits. Attorney's fees are allowable for settlement of a disputed claim.~~ Attorney's fees are not allowable for assisting a claimant in filing a claim. An award of attorney's fees is in addition to an award of compensation ~~and may be made whether or not compensation is awarded.~~ An award of attorney's fees may not exceed the lesser of twenty percent of the compensation awarded or one thousand dollars. No attorney may contract for or receive any larger sum than the amount allowed.

SECTION 6. AMENDMENT. Section 54-23.4-12 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-23.4-12. Subrogation - Actions - Allocation of expenses.

1. If compensation is awarded, the ~~state~~ division is subrogated to all the claimant's rights to receive or recover benefits or advantages, for economic loss for which and to the extent only that compensation is awarded, from a source that is, or, if readily available to the claimant, would be, a collateral source.
2. ~~As a prerequisite~~ Prior to bringing an action to recover damages related to criminally injurious conduct for which compensation is claimed or awarded, the claimant shall give the division ~~prior~~ written notice of the proposed action. ~~After receiving the notice, the division shall promptly:~~
 - a. ~~Join in the action as a party plaintiff to recover compensation awarded;~~
 - b. ~~Require the claimant to bring the action in the claimant's individual name, as a trustee in behalf of the state, to recover compensation awarded; or~~
 - c. ~~Reserve its rights and do neither in the proposed action.~~

~~If, as requested by the division, the claimant brings the action as trustee and recovers compensation awarded by the division, the claimant may deduct from the compensation recovered in behalf of the state the reasonable expenses, including attorney's fees, allocable by the court for~~

~~that recovery.~~ If a claimant brings an action for the recovery of damages related to criminally injurious conduct for which compensation is claimed or awarded, the division is subrogated to the rights of the claimant up to the total amount the division has paid. When there has been a recovery of damages, the costs of the action, to be paid by the division from the recovery, exclusive of attorney's fees, must be prorated and adjusted on the percentage of the total subrogation interest of the division recovered to the total recovery. If there is a recovery, the division shall pay attorney's fees to the claimant's attorney from the recovery in the amount of twenty-five percent of the subrogation interest recovered. For purposes of this section, recovery includes proceeds paid pursuant to a settlement, confession of judgment, or judgment of a court. The division may intervene in the action to recover compensation awarded. The division has a lien on a recovery to the extent it has paid compensation.

3. If a judgment or verdict indicates separately economic loss and noneconomic detriment, payments on the judgment must be allocated between them in proportion to the amounts indicated. In an action in a court of this state arising out of criminally injurious conduct, the judge, on timely motion, shall direct the jury to return a special verdict, indicating separately the awards for noneconomic detriment, punitive damages, and economic loss.

SECTION 7. EFFECTIVE DATE. This Act is effective August 1, 1997, for all claims for crime victims compensation benefits, irrespective of the date of the criminally injurious conduct or the date of application for crime victims compensation benefits.

Approved March 27, 1997
Filed March 27, 1997

CHAPTER 453

HOUSE BILL NO. 1035

(Legislative Council)
(Budget Committee on Government Services)
(Representatives Martin, Sveen)
(Senator St. Aubyn)

LIBRARY COORDINATING COUNCIL

AN ACT to create and enact chapter 54-24.4 of the North Dakota Century Code, relating to the North Dakota library coordinating council; to amend and reenact sections 54-24-02, 54-24-03, 54-24-09, 54-24.3-01, 54-24.3-03, 54-24.3-04, 54-24.3-05, 54-24.3-06, 54-24.3-07, 54-24.3-08, 54-24.3-09, 54-24.3-10, 54-24.3-11, 54-24.3-12, 54-24.3-13, 54-24.3-14, 54-24.3-15, and 54-24.3-16 of the North Dakota Century Code, relating to the state library and multitype library authorities; to repeal sections 54-24-07 and 54-24.3-02 of the North Dakota Century Code, relating to state library printing costs and the statewide library planning committee; and to provide appropriations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-24-02 of the North Dakota Century Code is amended and reenacted as follows:

54-24-02. Library offices. The state library must be furnished with adequate office room, with such suitable quarters as may be necessary for the proper shelving of ~~the educational reference~~ its library; ~~the books of the traveling libraries~~; and ~~the legislative reference collection~~ materials.

SECTION 2. AMENDMENT. Section 54-24-03 of the North Dakota Century Code is amended and reenacted as follows:

54-24-03. Powers and duties of state librarian. The state librarian shall:

1. Make rules for the operation of the state library.
2. Provide and care for all books and library materials in all collections of the state library; ~~general, reference, and special~~; and ~~make all rules regarding the loaning and returning of library materials~~ and work to focus the collections.
3. Employ qualified library personnel to care for all library procedures.
4. Make library materials available to libraries throughout the state, to individuals connected with departments of state, and to citizens of North Dakota who do not have adequate library facilities, under the rules of the state library.
5. ~~Promote and assist by counsel and encouragement the formation of libraries and the improvement of those already established, in keeping with state and national standards, and be available to librarians and trustees of libraries in the state for assistance in organization, maintenance, or administration of the libraries.~~ Work to improve

- library services to citizens by providing assistance to librarians and library trustees and staff and by encouraging the extension of networking and regional and statewide cooperation among libraries.
6. Coordinate the efforts of librarianship throughout the state, advising and assisting the extension of qualified public libraries into centers of county or ~~regional (multicounty)~~ multicounty libraries.
 7. ~~Compile statistics of the free public on all North Dakota libraries of North Dakota and their services and their larger counterparts of county and regional~~ multicounty libraries, regional library cooperatives including multitype library authorities, and of the work done at the state library, and make a full biennial report to the superintendent of public instruction and the governor. The state librarian may not require a private sector library to submit information relating to the provisions of this subsection.
 8. Collect, maintain, and make available a ~~reference and reading collection of books, slides, films, and other graphic informational~~ materials that supplement and support the needs of all libraries in the state, either by direct loan or by consultation, and that form a reference source for the officers of the state in performing their duties.
 9. ~~Collect and maintain a collection of the publications of the departments and agencies of state government, including the enacted laws of this state, current session laws, and journals. Assist libraries in developing local standards and guidelines defining the basic level of service that they will provide.~~
 10. Conduct, or have conducted, research into the conditions of library service in the state, and produce written plans for the development and betterment of that service.
 11. ~~Compile, or have compiled, union lists of resources of libraries throughout the state, and make these lists available for consultation. Promote and assist in the development of regional library cooperatives, including multitype library authorities.~~
 12. Establish levels of certification for ~~librarians~~ libraries of the state that meet the standards recommended by the American library association and the North Dakota library association.
 13. Promote and assist libraries in this state in developing and maintaining a computerized, comprehensive, bibliographic statewide data base for storing bibliographic records of libraries which allows residents unmediated, seamless, direct access to library catalogs with a common interface and a common set of commands and the ability to search the library collections of the entire state at one time or only the collections of the local library, regional libraries, or select group of libraries.
 14. Coordinate interlibrary loan activities throughout this state.
 15. Arrange for continuing education and training programs for library personnel.
 16. Provide technical assistance and counsel to library personnel.

17. Distribute grants to libraries within the limits of legislative appropriations for the purpose of developing or improving library services or programs.
18. Provide staff services to the North Dakota library coordinating council.

SECTION 3. AMENDMENT. Section 54-24-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-24-09. Distribution of certain state publications for certain libraries required. The state purchasing and printing agent shall arrange to deposit with the state library eight copies of all publications issued by all executive, legislative, and judicial agencies of state government intended for general public distribution. These publications must be provided to the state library without charge. ~~Should~~ If expense and limited supply of state publications, particularly audiovisual items, make ~~strict~~ compliance with the depository requirement impossible, the state library shall accept as many copies as an agency can afford to provide. However, each agency shall provide no less than two copies ~~must be provided~~ to the state library ~~by each agency~~. State publications refer to any informational materials regardless of format, method of reproduction, or source, originating in or produced with the imprint of, by the authority of, or at the total or partial expense of, any state agency. The definition incorporates those publications that may or may not be financed by state funds but are released by private bodies such as research and consultant firms under contract with or supervision of any state agency. In circumstances not directly involving the state purchasing and printing agent, a state agency shall comply with the depository requirement by arranging with the necessary parties for the printing and deposit of eight copies of any state publication issued. State publications are specifically defined as public documents appearing as reports, directories, statistical compendiums, bibliographies, laws or bills, rules, regulations, newsletters, bulletins, state plans, brochures, periodicals, committee minutes, transcripts of public hearings, other printed matter, audiotapes, videotapes, films, filmstrips, or slides, but not those administrative or training materials used only within the issuing agency. As the document acquisition and distribution agency, the state library shall retain for its ~~own use~~ document collection two copies of every state document received and transmit the remaining copies to the depository libraries. These are the libraries of the state historical board, the university of North Dakota, North Dakota state university, library of Congress, and two others to be designated by the state library. All nondepository North Dakota libraries ~~shall have the opportunity to~~ may receive state documents under an optional selection program developed by the state library. The state library shall catalog state publications and arrange for their conversion to microfilm or to optical disk storage prescribed by the state records administrator and shall make available for distribution the same to the designated depository libraries.

SECTION 4. AMENDMENT. Section 54-24.3-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-24.3-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Academic library" means a library that is part of a college or university that is publicly or privately funded and whose primary role is to provide resources to enrich and support the school's curricula and the research needs of students and faculty.
2. "Library resource center" means a central service unit, whose location is to be agreed upon by members of the ~~multitype library authority~~ regional library cooperative and ~~who~~ which is responsible for extending

special services to support members of the ~~multitype library authority~~ regional library cooperative, while meeting all ~~authority cooperative~~ standards.

3. "Multitype library authority" means a geographic subdivision within which multitype libraries are organized for the purpose of providing library and information services through cooperation and mutual support.
4. "~~Multitype library authority network~~" means the statewide group of ~~multitype library authorities~~.
5. "Participant library" means any library agreeing to join a ~~multitype library authority~~ regional library cooperative.
6. 5. "Public library" means a library that is supported with funds derived from taxation and which maintains a balanced collection of materials to serve the lifelong information, reading, and recreational needs of the general population.
6. "Regional library cooperative" means an organization of one or more types of library organized under article VI of section 54-24.1-01, or a multitype library authority.
7. "School library media center" means a learning center operated as part of a publicly or privately supported school or school district and whose role is to provide instruction, cooperatively design learning strategies, and provide resources that support and enrich the curriculum, following the North Dakota school library media guidelines.
8. "Special library" means a public or private sector library whose collection is specialized and limited in scope and size and whose role is to provide information to a limited clientele.

SECTION 5. AMENDMENT. Section 54-24.3-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-24.3-03. ~~Committee~~ North Dakota library coordinating council powers and duties. In the administration of this chapter, the ~~committee~~ North Dakota library coordinating council may:

1. Adopt ~~bylaws~~ rules for the conduct of business.
2. Provide guidance for the development, implementation, and improvement of ~~the multitype library authority network~~ regional library cooperatives.
3. Enter ~~into~~ contracts necessary for establishing and governing regional library cooperatives.
4. ~~Utilize~~ Use the staff of the state library ~~as permitted by~~ in consultation with the state librarian.
5. Adopt a compensation plan for ~~network~~ staff as necessary for establishing and governing regional library cooperatives.

6. Set the terms and conditions of statewide service contracts with libraries.
7. Determine necessary or desirable ~~interauthority~~ regional or statewide library programs or services.
8. Propose standards for service.
9. Set ~~interauthority~~ reimbursement formulas among regional library cooperatives for reciprocal borrowing and other cooperative plans and set statewide policies for reimbursement formulas for reciprocal borrowing.
10. Conduct periodic performance reviews of ~~multitype library authorities~~ all categories of coordinating council grant-funded projects and make service revisions.
14. ~~Determine types of interaction and linkage of the North Dakota multitype library network with interstate and national library networks.~~

SECTION 6. AMENDMENT. Section 54-24.3-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-24.3-04. ~~Multitype library authorities~~ Regional library cooperatives - Establishment. ~~The committee shall North Dakota library coordinating council may establish one multitype library authority during the 1994-93 biennium and shall establish one or more multitype library authorities in each biennium thereafter, until no fewer than four nor more than eight are in existence~~ regional library cooperatives. In establishing the ~~authorities~~ cooperatives, the ~~committee~~ council shall consider:

1. Population;
2. Population density;
3. Number and types of libraries;
4. Library information resources, including existing libraries, staff and collections;
5. Marketing and transportation patterns;
6. Proximity of municipalities;
7. Geographic size of the authority;
8. Finances; and
9. Any other matter not inconsistent with this section.

SECTION 7. AMENDMENT. Section 54-24.3-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-24.3-05. ~~Multitype library authority~~ Regional library cooperative interim planning committee - Establishment. ~~The statewide library planning committee~~ North Dakota library coordinating council shall appoint an interim planning committee for the ~~multitype library authority~~ a proposed regional library

cooperative. The interim planning committee must consist of two lay representatives residing within the authority cooperative and five librarians. The librarians must, as far as practical, must represent public libraries, academic libraries, school library media centers, and special libraries.

SECTION 8. AMENDMENT. Section 54-24.3-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-24.3-06. ~~Multitype library authority~~ Regional library cooperative interim planning committee - Duties. In the administration of this chapter, the ~~multitype library authority~~ regional library cooperative interim planning committee may:

1. Elect provisional officers;
2. Identify all librarians eligible to be members of the ~~multitype library authority~~ regional library cooperative;
3. Hold informational meetings;
4. Distribute and receive applications for memberships in the ~~multitype library authority~~ regional library cooperative;
5. Draft interim bylaws for the ~~multitype library authority~~ regional library cooperative;
6. Prepare papers of incorporation;
7. Publicize activities;
8. Prepare a three-year plan for the development of services within the ~~authority cooperative~~ and present it to the ~~statewide planning committee~~ North Dakota library coordinating council for review and approval; and
9. Exercise any other duty that is necessary to carry out this chapter.

SECTION 9. AMENDMENT. Section 54-24.3-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-24.3-07. ~~Multitype library authority~~ Regional library cooperative - Membership. To join the regional ~~multitype library authority~~ library cooperative, a library ~~shall~~ must obtain official approval from its board and submit an application to the interim planning committee. A library that agrees to provide to any person residing within the ~~authority cooperative~~ access to its collection on the premises, reciprocal borrowing privileges, and interlibrary loan service, may apply for membership. To be eligible for membership, a library ~~shall~~ must have defined service objectives, a fixed location, regular hours of service, an organized collection of information and materials accessible for use by its designated clientele, and a qualified and responsible staff. The library ~~shall~~ must have an identifiable organizational structure and a legal basis for operation. The library ~~shall~~ must be willing and able to participate in appropriate services and programs as set forth by the ~~multitype library authority~~ regional library cooperative. The ~~multitype library authority~~ regional library cooperative interim planning committee shall review all applications and approve applicants for membership.

SECTION 10. AMENDMENT. Section 54-24.3-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-24.3-08. ~~Multitype library authority~~ Regional library cooperative - Board.

Each participating library shall designate a representative to sit on the board of the ~~multitype library authority~~ regional library cooperative. At its first meeting, the board shall elect a president, vice president, treasurer, and any other officer it determines to be necessary. The director of the designated library resource center shall serve as an ex officio nonvoting member of the board. The board shall meet at least six times a year and has the power to contract, hire staff and set compensation levels, and adopt bylaws for the conduct of its business. The term of office for all officers of the board is one year, commencing on the January first after election.

SECTION 11. AMENDMENT. Section 54-24.3-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-24.3-09. ~~Multitype library authority~~ Regional library cooperative - Powers and duties. In the administration of this chapter, each ~~multitype library authority~~ regional library cooperative may:

1. Sue and be sued in the name of the ~~authority~~ cooperative.
2. Designate for the ~~multitype library authority~~ cooperative a central library resource center with responsibility to extend special services to ~~authority~~ cooperative members while meeting all ~~authority~~ cooperative standards.
3. Designate an administrative officer for the ~~multitype library authority~~ regional library cooperative.
4. Establish, manage, maintain, and operate library facilities.
5. Employ necessary personnel to carry out ~~the provisions of~~ this chapter.
6. Purchase supplies and equipment.
7. Acquire and hold property by purchase, devise, lease, gift, or otherwise and sell, exchange, or otherwise dispose of property.
8. Prepare and adopt a budget.
9. Receive and account for funds from ~~authority~~ cooperative members.
10. Adopt rules.
11. Make an annual report to each member regarding the budget and expenditures, services rendered, program, development plans, audits, and any other information.
12. Enter into contracts necessary to fulfill this chapter.
13. Establish and collect rates and charges for services rendered.
14. Invest excess funds.
15. Establish special funds.
16. Join and participate in civic and professional organizations.

SECTION 12. AMENDMENT. Section 54-24.3-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-24.3-10. ~~Multitype library authority~~ Regional library cooperative members - Rights and responsibilities. All members of a ~~multitype library authority~~ regional library cooperative are entitled to receive supplementary reference services, delivery service for library materials, interlibrary loan services, and assistance with citation and location of materials, and reciprocal borrowing privileges among the users of member libraries. All members of a ~~multitype library authority~~ regional library cooperative shall share resources with the exception that rare or restricted materials may be exempt, implementing use standards and protocols; avail themselves of continuing education and training opportunities provided by the ~~authority, cooperative;~~ participate in reference, referral, and interlibrary loan services using communication systems for information exchanged among all types of libraries; maintain total expenditures for library operation, excluding capital improvements, at a level not lower than the preceding fiscal year, or maintain the same or higher mill levy or mill rate equivalency as the preceding fiscal year; and participate in cooperative bibliographic projects.

SECTION 13. AMENDMENT. Section 54-24.3-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-24.3-11. Voting rights of members. Each academic, institutional, public, school, and special library has one vote on the board of the ~~multitype library authority~~ regional library cooperative. Each operating public school district has one vote on the board of the ~~authority cooperative,~~ and represents all public school media centers located within the district. Private and parochial school media centers located within each public school district are a single entity, and shall elect one voting representative from among themselves.

SECTION 14. AMENDMENT. Section 54-24.3-12 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-24.3-12. Withdrawal of membership. To discontinue participation in a ~~multitype library authority~~ regional library cooperative, a library ~~authority cooperative~~ member shall ~~obtain a resolution or letter that originally requested membership, and give, in advance, a one-year written notice to the board of the multitype library authority with a copy to cooperative and the statewide North Dakota library planning committee, at least two years before the desired effective date of termination~~ coordinating council. No member may withdraw unless it has been a participant in the ~~multitype library authority~~ regional library cooperative for at least ~~five~~ two years at the time of termination. The withdrawing member shall return all property of the ~~multitype library authority~~ regional library cooperative.

SECTION 15. AMENDMENT. Section 54-24.3-13 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-24.3-13. ~~Multitype library authority~~ Regional library cooperatives - Operating grants. Each ~~multitype library authority~~ regional library cooperative, upon formation, ~~may~~ may apply to the ~~statewide library planning committee for a grant to include costs of operation, equipment, interlibrary loan reimbursement funding, and any other necessary purpose~~ North Dakota library coordinating council for grant funds available for disbursement by the council.

SECTION 16. AMENDMENT. Section 54-24.3-14 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-24.3-14. Fiscal controls and reports. The board of the ~~multitype library authority~~ a regional library cooperative shall develop appropriate accounting and record management policies and procedures documenting the operations of the ~~multitype library authority cooperative~~. These policies and procedures must provide that:

1. All records for the ~~multitype library authority~~ regional library cooperative and board, including those of the board treasurer, are to be maintained at the ~~authority cooperative~~ headquarters.
2. Copies of the ~~multitype library authority~~ regional library cooperative board minutes are sent to each member library, the North Dakota library coordinating council, and ~~to the statewide library planning committee~~ the state librarian.
3. The fiscal year runs from July first to June thirtieth and financial records and activities are maintained in accordance with accepted accounting practices. A record of all bills, payments, and receipts must be presented to the ~~multitype library authority~~ regional library cooperative board by the treasurer at regular meetings and at any other meeting as required by the board.
4. An annual report of cooperative operations, including an accounting of all revenues and expenses, must be filed with the North Dakota library coordinating council and the state librarian at the close of each fiscal year.

SECTION 17. AMENDMENT. Section 54-24.3-15 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-24.3-15. Cooperative services and activities.

1. Each ~~multitype library authority~~ regional library cooperative shall include as part of its five-year plan for development, provisions for:
 - a. Reference services to supplement those provided by each local library, including interlibrary reference and referral services to residents of the ~~authority cooperative~~.
 - b. Interlibrary loan services on behalf of residents of the ~~authority cooperative~~.
 - c. Delivery services for library materials.
 - d. Citation and location services for library materials.
2. Each ~~multitype library authority~~ cooperative may provide for:
 - a. Consultant services and shared staff expertise;
 - b. Cooperative or coordinated acquisition of library materials or subject specialization programs;
 - c. Reciprocal borrowing between member librarians;
 - d. Staff development and inservice training programs;

- e. Centralized ordering, cataloging, and processing of the library materials;
- f. Cooperative storage of library materials and lost-copy protection programs;
- g. Access to computerized literature citation and information data bases;
- h. Preservation of library materials programs;
- i. Public relations services; and
- j. Any other services not inconsistent with this section.

SECTION 18. AMENDMENT. Section 54-24.3-16 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-24.3-16. Dissolution of the ~~multitype library authority~~ regional library cooperative. If the need for a ~~multitype library authority~~ regional library cooperative ceases to exist, the board of the ~~multitype library authority~~ may cooperative, by a two-thirds vote of its members, may declare its intent to dissolve the organization and file with the ~~statewide library planning committee~~ North Dakota library coordinating council a plan for affecting ~~such the~~ dissolution. Upon receipt of the dissolution plan, the ~~committee council~~ shall determine if the area of service can be allocated to other ~~multitype library authorities~~ regional library cooperatives, determine whether the assets and liabilities of the ~~multitype library authority~~ regional library cooperative seeking to dissolve can be assumed and absorbed by adjoining ~~multitype library authorities~~ regional library cooperatives, and consider any other factors ~~which that~~ relate to the operation and functioning of the ~~multitype library authority~~ regional library cooperative seeking to dissolve. If the ~~committee council~~ determines that the ~~multitype library authority~~ regional library cooperative should be dissolved, the dissolution takes effect when all legal and fiscal obligations of the ~~multitype library authority~~ regional library cooperative have been satisfied.

²³ **SECTION 19.** Chapter 54-24.4 of the North Dakota Century Code is created and enacted as follows:

54-24.4-01. North Dakota library coordinating council - Members - Term. The North Dakota library coordinating council consists of ten members. The president of the North Dakota library association is an ex officio, voting member of the council. The state librarian is an ex officio nonvoting member of the council. The governor shall appoint eight members to the council, one of whom must represent special libraries, one of whom must represent public higher education institution libraries, one of whom must represent private higher education institution libraries, one of whom must represent school libraries, two of whom must represent public libraries, one of whom must represent disabled, economically disadvantaged, and minority populations, and one citizen at large. The governor shall take into account reasonable geographic considerations when appointing members of the council. The term of each member is three years. Of the initial council, three

²³ Section 54-24.4-02 was also amended by section 27 of Senate Bill No. 2052, chapter 432.

members must be appointed by the governor for a three-year term, three members must be appointed by the governor for a two-year term, and two members must be appointed by the governor for a one-year term. If at any time during a member's term, the member ceases to possess the qualifications required by this section, the member's office is deemed vacant and the governor shall appoint a qualified representative to complete the term of office. No member may be appointed to serve more than two consecutive three-year terms.

54-24.4-02. North Dakota library coordinating council - Compensation and expense reimbursement. Each member of the North Dakota library coordinating council is entitled to receive the same per day compensation as provided for members of the legislative council under section 54-35-10, together with expenses as provided in sections 44-08-04 and 54-06-09, while attending meetings or performing duties directed by the council. No compensation may be paid under this section to any council member who receives compensation as a regular state official or employee.

54-24.4-03. North Dakota library coordinating council - Meetings. The North Dakota library coordinating council shall hold at least one meeting each calendar year for the purpose of awarding grants or contracts. The council shall give notice to the press and the public of any council meeting at least thirty days in advance of the meeting. Awarding of any grant or contract requires approval by two-thirds of the members of the council.

54-24.4-04. North Dakota library coordinating council - Powers. The North Dakota library coordinating council may elect from its members an executive committee to assist it in performing its duties. The council, in consultation with the state librarian, may request assistance from the staff of the state library in performing its powers and duties.

54-24.4-05. North Dakota library coordinating council - Duties. The North Dakota library coordinating council shall:

1. Assist in planning, coordinating, and evaluating the services and programs of libraries in the state.
2. Serve as the state advisory council on libraries as required by Public Law No. 101-254.
3. Approve the distribution of grants to libraries, except for grants distributed under chapter 54-24.2.
4. Facilitate the development of a comprehensive statewide electronic data base, generate statewide resource sharing, and encourage electronic networking among all types of libraries.
5. Strengthen and support the state library in its role of coordinating the extension and improvement of library services in the state.
6. Strengthen and support regional library cooperatives in extending and improving library services in the state.
7. Inform the public and governing bodies of the goals and objectives of the council and of the role of libraries in assuring equitable access to information technology and basic library services.

8. Support literacy projects for all ages.
9. Facilitate the coordination of statewide library services.
10. Take action necessary to carry out chapter 54-24.3 and this chapter.

SECTION 20. REPEAL. Section 54-24-07 of the North Dakota Century Code and section 54-24.3-02 of the 1995 Supplement to the North Dakota Century Code are repealed.

SECTION 21. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$55,000, or so much of the sum as may be necessary, to the state library for the purpose of connecting library information systems currently operating in the state to allow residents access to library collections included in these systems with one seamless unmediated search, for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 22. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$70,000, or so much of the sum as may be necessary, to the state library for the purpose of providing grants to libraries, schools, or regional library cooperatives to assist them in accessing the internet, for the biennium beginning July 1, 1997, and ending June 30, 1999. The state library shall distribute the grants to libraries, schools, or regional library cooperatives as directed by the North Dakota library coordinating council. The North Dakota library coordinating council shall award grants based on the following criteria:

1. A library, school, or regional library cooperative receiving a grant must provide matching funds.
2. When possible, libraries, schools, and regional library cooperatives should establish partnerships to create and maintain networks.
3. Projects receiving grants must acknowledge and respond to the needs of the public.
4. Internet access for public users must be ensured and the network must be accessible, easy to operate, attractive, and well-supported through training, technical support, maintenance, and upgrading of the network and its associated equipment.
5. The network must be developed and operated with broad participation and input from users.
6. The network must meet appropriate state, national, and international standards and specifications and have the capability to connect with existing telecommunications systems.

Approved April 10, 1997
Filed April 11, 1997

CHAPTER 454

HOUSE BILL NO. 1126

(Government and Veterans Affairs Committee)

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

GENERAL FUND REFUNDS

AN ACT to amend and reenact section 54-27-24 of the North Dakota Century Code, relating to paying refunds from the general fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-27-24 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-27-24. ~~State refund account~~ Paying refunds from the general fund. ~~The office of management and budget shall establish a state refund account. The account is to be used by each~~ Each office, agency, or institution that must deposit funds collected; ~~directly to~~ in the general fund shall pay refunds from the general fund.

The office of management and budget shall establish accounting requirements for ~~the account~~ paying refunds from the general fund in accordance with the central accounting system.

Approved February 11, 1997

Filed February 11, 1997

CHAPTER 455**SENATE BILL NO. 2054**

(Senator G. Nelson)
(Representative Dorso)

**LIEUTENANT GOVERNOR REMOVAL FROM
COMMITTEES**

AN ACT to amend and reenact section 54-35-02.1 of the North Dakota Century Code, relating to the membership of the budget section and the legislative audit and fiscal review committee; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-35-02.1 of the North Dakota Century Code is amended and reenacted as follows:

54-35-02.1. Legislative audit and fiscal review committee. For the purposes of studying and reviewing the financial transactions of this state; to assure the collection and expenditure of its revenues and moneys in compliance with law and legislative intent and sound financial practices; and to provide the legislative assembly with formal, objective information on revenue collections and expenditures for a basis of legislative action to improve the fiscal structure and transactions of this state, the legislative council shall create a division of the budget section of the legislative council entitled the legislative audit and fiscal review committee. ~~The lieutenant governor shall serve as a member of the budget section and as chairman of the legislative audit and fiscal review committee.~~ Other members of the committee must be appointed in the same manner as other members of legislative council committees. ~~The lieutenant governor must be compensated for the time spent and for expenses incurred in attendance at sessions of the committee and other official duties of such committee in the same amounts as other committee chairmen of the council.~~

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

Approved April 1, 1997
Filed April 2, 1997

CHAPTER 456

HOUSE BILL NO. 1385

(Representatives Bernstein, Carlson, Skarphol)
(Senator B. Stenehjem)

ADMINISTRATIVE RULES COMMITTEE MEMBERSHIP

AN ACT to amend and reenact sections 54-35-02.5 and 54-35-17 of the North Dakota Century Code, relating to the composition of the administrative rules committee and the retention of legal counsel by the legislative branch; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-35-02.5 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-35-02.5. ~~Committee on administrative~~ Administrative rules committee. The legislative council ~~shall~~, during each biennium, shall appoint a ~~committee on an~~ administrative rules committee in the same manner as the council appoints other interim committees. The legislative council shall designate the chairman of the committee. The committee shall operate according to the statutes and procedure governing the operation of other legislative council interim committees. The membership of the administrative rules committee must include at least one of the members who served during the most recently completed regular session of the legislative assembly from each of the standing committees of either the house of representatives or the senate.

SECTION 2. AMENDMENT. Section 54-35-17 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-35-17. Retention of legal counsel. When the legislative assembly is in session, either house by resolution may authorize, or both houses by concurrent resolution may direct, the legislative council to appoint or retain legal counsel to appear in, commence, prosecute, defend, or intervene in any action, suit, matter, cause, or proceeding in any court or agency when deemed necessary or advisable to protect the official interests of the legislative branch. When the legislative assembly is not in session, the legislative council, by a ~~two-thirds~~ majority vote, may appoint or retain legal counsel to appear in, commence ~~or~~, prosecute, ~~or by a majority vote,~~ ~~may appoint or retain legal counsel to~~ defend, or intervene in; any action, suit, matter, cause, or proceeding in any court or agency when deemed necessary or advisable to protect the official interests of the legislative branch. Section 54-12-08 does not apply to a person appointed or retained under this section.

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

Approved April 4, 1997
Filed April 4, 1997

CHAPTER 457

HOUSE BILL NO. 1034

(Legislative Council)
 (Budget Committee on Agriculture and Information Services)
 (Representative Byerly)
 (Senators Robinson, C. Nelson)

LEGISLATIVE INFORMATION TECHNOLOGY PROGRAM

AN ACT to create and enact four new sections to chapter 54-44.2 of the North Dakota Century Code, relating to information technology planning, standards, setting, and reviews by the information services division; to amend and reenact sections 15-65-01, 15-65-02, 15-65-03, 15-65-06, 54-35-15, 54-44.2-00.1, 54-44.2-01, 54-44.2-02, 54-44.2-04, 54-44.2-06, 54-44.2-07, and 54-44.2-08 of the North Dakota Century Code, relating to the educational telecommunications council, information technology responsibilities of the legislative council, and duties and responsibilities of the information services division; to repeal sections 15-65-04, 54-44.2-02.1, 54-44.2-02.2, 54-44.2-02.3, 54-44.2-02.4, and 54-44.2-02.5 of the North Dakota Century Code, relating to the educational telecommunications council and duties and responsibilities of the information services division; to provide statements of legislative intent; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-65-01 of the North Dakota Century Code is amended and reenacted as follows:

15-65-01. North Dakota educational telecommunications council - Creation - Purpose. The North Dakota educational telecommunications council shall encourage and ~~direct~~ promote the ~~creation of educational telecommunication programs and use of technology for educational purposes and the development of technology systems to improve educational opportunity within the state.~~

SECTION 2. AMENDMENT. Section 15-65-02 of the North Dakota Century Code is amended and reenacted as follows:

15-65-02. Membership - Appointment - Term - No compensation - Expenses - Organization. The North Dakota educational telecommunications council consists of:

1. The commissioner of higher education or the commissioner's designee.
2. The superintendent of public instruction or the superintendent's designee.
3. ~~One citizen member appointed by the governor giving preference to users of a telecommunications system.~~
4. The director of the information services division of the office of management and budget.

- ~~5. A representative of prairie public broadcasting, appointed by the governor.~~
- ~~6. 4. A representative of the telephone industry, appointed by the governor.~~
- ~~7. A representative of the North Dakota association of telephone cooperatives, appointed by the governor.~~
- ~~8. A representative of the North Dakota cable television association, appointed by the governor.~~
- ~~9. 5. A school board member, appointed by the governor.~~
- ~~10. 6. A school administrator, appointed by the governor.~~
- ~~11. 7. A schoolteacher, appointed by the governor.~~

The term of office of the appointed members is three years; ~~except that of the original appointees, three shall serve one year, three shall serve two years, and two shall serve three years, which appointees to be determined by lot.~~ At all times either the school board member or the school administrator must be from a school with an enrollment of ~~less~~ fewer than five hundred students.

The ~~two citizen~~ members, the school board member, the school administrator, and the schoolteacher appointed by the governor must be reimbursed for actual necessary expenses incurred in the performance of their duties as members of the council at the same rates as provided by law for other state officers and employees. The costs incurred in reimbursing the ~~two citizen~~ members of the council for their actual necessary expenses must be paid by the superintendent of public instruction. The other members of the council are not entitled to any compensation or reimbursement for expenses incurred in performing their duties. ~~The superintendent of public instruction shall call the initial meeting of the council at which time the council shall elect its chairman and other officers and take such other action as it deems appropriate.~~

SECTION 3. AMENDMENT. Section 15-65-03 of the North Dakota Century Code is amended and reenacted as follows:

15-65-03. Powers and duties. The council shall:

1. ~~Direct the implementation of telecommunication systems that are compatible and that can be connected with each other.~~ Promote the use of technology and the development of technology systems to enhance educational opportunities within the state.
2. ~~Develop a comprehensive written plan for the development of telecommunications in this state.~~ Cooperate with state agencies and other organizations to develop statewide educational technology systems.
3. ~~Be concerned with the development and use of statewide educational telecommunication programs and systems.~~
4. ~~Hold coordinating authority for the development of such statewide educational telecommunication programs and systems as may be required to serve the entire state.~~

5. Assist any organization, state agencies, or both in the preparation, filing, and prosecution before federal agencies such applications, reports, or other documents or requests of any kind that may be necessary or appropriate to achieve the purposes of this chapter.
 6. Receive gifts and contributions from public and private sources to be expended to provide educational telecommunication programs and systems.
 7. Be concerned with the activation of educational broadcasting channels presently assigned to North Dakota, or the reallocation or addition of the channels, or both, as are determined to be in the best interests of the people of the state.
 8. Actively cooperate with the state department of public instruction and the state board of higher education and other agencies and private organizations for the purpose of developing statewide educational telecommunication projects.
 9. Adopt bylaws for the conduct of its affairs.
40. 4. Publish the informational material it deems necessary.
44. 5. ~~Carry on~~ Conduct a continuing study relating to assess the needs, resources, and facilities which are available or may be required to establish educational telecommunication programs and technology systems throughout the entire state.
42. 6. ~~Contract with eligible applicants to build and operate public television stations in this state. Eligible applicants are those licensed by the federal communications commission to operate noncommercial public television stations. Operational contracts may not exceed the amount raised within the preceding fiscal year by the applicant from nontax sources in this state. Receive gifts and grants from private and public sources to be expended for educational technology projects.~~

SECTION 4. AMENDMENT. Section 15-65-06 of the North Dakota Century Code is amended and reenacted as follows:

15-65-06. Plan for statewide system of interactive telecommunications educational technology - Solicitation of grants. In developing and implementing a plan for a statewide system of interactive telecommunications educational technology, the educational telecommunications council shall solicit grants to be used in conjunction with moneys appropriated by the legislative assembly for telecommunications educational technology. Any moneys appropriated by the legislative assembly for telecommunications educational technology, unless specifically provided otherwise, and any grants received in accordance with this section must be used to implement the ~~plan~~ systems developed by the educational telecommunications council pursuant to this chapter.

SECTION 5. AMENDMENT. Section 54-35-15 of the North Dakota Century Code is amended and reenacted as follows:

54-35-15. Science and Information technology program - Staff - Powers and duties.

1. The legislative council, or its designee, shall provide ~~scientific and technological~~ information technology research and staff services to the legislative branch. The services must be provided in accordance with the existing statutory authority of the legislative council and within the framework of its other staff services.
2. The legislative council staff office shall provide ~~the scientific and technological~~ information technology services, and the council, or its designee, may hire such additional staff as are necessary, and set compensation for any additional staff within the limits of legislative appropriations.
3. The council, or its designee, shall structure the provision of ~~scientific and technological~~ information technology services and assistance to the legislative assembly; and shall receive such cooperation and assistance from other state agencies as it may reasonably request.
4. The council, or its designee, shall study emerging technology and evaluate its impact on the state's system of information technology, and report and make recommendations to the legislative council and the legislative assembly regarding information technology in state government.
5. The council, or its designee, shall develop guidelines for reports to be provided by each executive branch agency, institution, or department, the institutions under the control of the board of higher education, and agencies of the judicial and legislative branches on information technology in those entities.
6. The council, or its designee, shall review the information technology management of executive branch agencies, institutions, or departments, institutions under the control of the board of higher education, and agencies of the judicial and legislative branches as determined necessary by the council or its designee.
7. The council, or its designee, shall perform information systems reviews and audits of information technology systems or applications of executive branch state agencies, institutions, and departments, institutions under the control of the state board of higher education, and agencies of the judicial and legislative branches, as determined necessary by the council, or its designee. The reviews and audits may include evaluating compliance with system or application requirements, data integrity, security, controls, audit trails, backup and recovery methods, and the effectiveness and appropriateness of the system in achieving its intended purpose, as applicable.
8. The council, or its designee, shall monitor the implementation of information technology systems development projects and application development projects for conformance with the agency's strategic plan and compliance with statewide policies and standards as determined necessary by the council, or its designee, and report any nonconformance or noncompliance discovered to the council or its designated committee.
9. As used in this section, "information technology" means computing and data communications systems and their supporting infrastructure used in

the acquisition, processing, management, analysis, storage, and delivery of information.

SECTION 6. AMENDMENT. Section 54-44.2-00.1 of the North Dakota Century Code is amended and reenacted as follows:

54-44.2-00.1. Definitions. As used in this chapter:

1. "Data processing" or "electronic data processing" means the systematic sequencing of operations performed by data processing equipment or programs, or both, upon data stored or entered in alphabetic, numeric, or alphanumeric format. "Information technology" means computing and data communications systems and their supporting infrastructure used in the acquisition, processing, management, analysis, storage, and delivery of information.
2. "Data processing equipment" means an electronic device or associated devices, except calculators and stand-alone noncommunicating word processors, which perform logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all compiling and related input, output, and storage, equipment, programs and procedures, and data processing communications facilities. "Information technology services" means the equipment, software, and services necessary for the acquisition, processing, management, analysis, storage, and delivery of information.
3. "Telecommunications" means the electronic exchange of voice, data, image, and video information. "Telephone services" means the equipment, software, and services necessary to transmit voice, data, or video through the public telephone network.
4. "Transmission facilities" means terrestrial lines, and microwave, lightwave, and satellite facilities.
5. "Word processing" means the textual formatting, correcting, editing, and rearranging of language elements, designed to convey full messages in English syntax, through manipulation of electronic or magnetic impulses. "Word processors" are devices on which word processing can be carried out.

SECTION 7. AMENDMENT. Section 54-44.2-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.2-01. Information services division - Creation. The information services division is established in the office of management and budget. The director of the office of management and budget shall appoint a director of the information services division. The director of the information services division shall supervise and regulate ~~electronic data processing activities~~ the information technology of all executive branch state agencies, institutions, departments, and boards, ~~except the job service North Dakota and the office of the adjutant general~~ excluding the institutions under the control of the board of higher education. ~~The division shall establish an electronic data processing center which must, unless excepted by the director, be used by all executive branch state agencies, departments, and institutions except the institutions under the control of the board of higher education, the job service North Dakota, and the office of the adjutant general. The division shall provide data processing services to the legislative and judicial branches of government. If the~~

division is unable to fulfill a request for service from the legislative or judicial branch of government, the service may be procured by the legislative or judicial branch within the limits of legislative appropriations.

The director of the information services division must be appointed upon the basis of education, experience, and other qualifications in data processing information technology and administration. ~~The position of director is not a classified position and the director,~~ without reference to partisan politics, and must serve at the pleasure of the director of the office of management and budget. The director of the information services division shall employ such other professional, technical, and clerical personnel as the director determines to be necessary to carry out the duties prescribed in this chapter and ~~shall,~~ within the limits of the legislative appropriation, shall fix the salaries of all employees within the division. All personnel within the division must be allowed their actual and necessary travel expenses at the same rate as for other employees of the state.

SECTION 8. AMENDMENT. Section 54-44.2-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.2-02. Information services division - Powers and duties. The information services division shall:

1. Provide systems design, programming, and other data processing information technology services.
2. ~~Design, plan, justify, and implement all data processing systems within and between state agencies that utilize the services of the division.~~ Provide telephone services.
3. Have the authority to purchase or lease ~~such additional~~ equipment or replace, including by trade or resale, present equipment as may be necessary to carry out this chapter. Each executive branch department, agency, or institution, except the institutions under the control of the board of higher education, ~~the job service North Dakota, and the office of adjutant general,~~ shall submit to the director of the information services division for approval or disapproval and the legislative council, or its designee, in accordance with guidelines established by the division, a written request for data processing services that require new data processing applications. A request must also be submitted for modifications to existing data processing applications which are expected to increase the cost of operating such data processing applications by more than fifteen percent. The director may approve or disapprove the lease, purchase, or other contractual acquisition of ~~additional or new~~ electronic data processing information technology services or equipment by executive branch agencies, except the institutions under the control of the board of higher education, the job service North Dakota, and the office of adjutant general. The director may authorize a user agency to house and operate electronic data processing equipment. The information services division shall review requests for conformance with the requesting organization's strategic plan and compliance with statewide policies and standards. If the request is not in conformance or compliance, the information services division may disapprove the request or require justification for the departure from the strategic plan or statewide policy or standard. The division shall inform the legislative council, or its designee, of any requests disapproved or additional justification received relating to a request.

4. Provide data processing information technology services, including assistance and advisory service to the legislative, executive, and judicial branches. If the division is unable to fulfill a request for service from the legislative or judicial branch, the service may be procured by the legislative or judicial branch within the limits of legislative appropriations.
5. Establish and justify data processing activities and costs in order that effectiveness can be measured.
6. Establish a data bank to eliminate the duplicate storage of common data and thereby develop more economical and efficient use of the data processing system. The data bank must consist of data, except where data is restricted from such use by law and such confidentiality cannot be reasonably maintained in the data bank, contained within the files of all agencies, departments, and institutions being provided services by the division. If the data bank contains data of use to other departments, agencies, and institutions, the data may be made available to such departments, agencies, and institutions after notice has been given to the agency, department, or institution from which the data was originally received.
7. Analyze proposals for executive branch agency word processing equipment and facility acquisitions and make such comments and recommendations as it may believe necessary so that such equipment and facilities will be compatible with electronic data processing equipment and programs under the supervision of the division. The office of management and budget may not approve vouchers for acquisition of word processing equipment and facilities by executive branch agencies unless the vouchers have attached to them the division's comments and recommendations.
8. Conduct conferences and meetings with various state agencies, departments, institutions, and political subdivisions to review proposals and provide information on improving telecommunications and transmission facilities in government and coordinate information technology services. The information services division shall report annually to the legislative council or its designated committee regarding the coordination of services with political subdivisions.
9. Implement improvements in the state telecommunications and transmission facilities as are feasible and within the limitations of appropriated funds.
10. Adopt any rules determined to be necessary to establish standard procedures and practices in the development and use of telecommunications and transmission facilities provided by the division.
11. Provide advice, general guidelines, and information to political subdivisions on the compatibility and interactive capacity of computers and other electronic information systems with the goal of developing a statewide compatible electronic communications network by 1996.
42. 6. Have authority to request information on or review information technology systems, applications, system development projects, and

application development projects of executive branch departments, agencies, and institutions.

7. Perform all other duties necessary to carry out this chapter.

SECTION 9. Four new sections to chapter 54-44.2 of the North Dakota Century Code are created and enacted as follows:

Information technology standards. The information services division, based on information from state agencies, institutions, and departments, and in consultation with the legislative council, shall develop statewide information technology policies, standards, and guidelines. Unless an exception is granted by the information services division, each executive branch state agency, institution, or department, excluding the institutions under the control of the board of higher education, shall comply with the policies and standards developed by the information services division.

Information technology planning. Each executive branch state agency, institution, or department, including the institutions under the control of the board of higher education, shall prepare an information technology strategic plan, subject to approval by the information services division. The plan must be submitted to the information services division and the legislative council by January fifteenth of each even-numbered year. The plan must be prepared based on guidelines developed by the information services division in consultation with the legislative council; must provide the information technology goals, objectives, and activities of the organization for the next five years; and must include a detailed list of information technology assets owned, leased, or employed by the agency, institution, or department. Each agency, institution, or department shall provide interim updates to its plan if major information technology changes occur which affect its plan. The information services division shall review each agency's, institution's, or department's strategic plan for compliance with statewide information technology policies and standards and may require an agency, institution, or department to change its strategic plan to comply with statewide policies or standards or to resolve conflicting directions among plans. Agencies of the judicial and legislative branches shall file their information technology strategic plans with the information services division and the legislative council by January fifteenth of each even-numbered year. Each agency, institution, or department shall prepare its budget request for the next biennium based on its information technology strategic plan. Based on the plans prepared by agencies, institutions, and departments, the information services division shall prepare a statewide information technology strategic plan and distribute copies of that plan to members of the legislative assembly as requested by the legislative council or its designee.

Information technology coordination - Report to legislative council. The director of the information services division and the commissioner of the board of higher education shall meet at least twice each year to plan and coordinate their information technology systems and services. The director and commissioner shall consider areas in which joint or coordinated information technology systems and services may result in more efficient and effective state government operations. The director and commissioner shall report their findings and recommendations to the legislative council or its designated committee before November of each year.

Information technology management reviews - Report to legislative audit and fiscal review committee. The information services division shall review the information technology management of executive branch state agencies, institutions, or departments, including the institutions under the control of the board of higher

education, as determined by the director of the information services division. The review must include an evaluation of the organization's planning effectiveness, conformance to its strategic plan, compliance with statewide policies and standards, asset quality, and training methods, and for an organization that contracts for information technology services, an analysis of the organization's contract management system and the contractor's compliance with contract provisions. If an agency, institution, or department is found not to be in compliance with statewide policies and standards and does not agree to come into compliance, the information services division may report the issue to the legislative audit and fiscal review committee. The information services division shall report recurring issues of noncompliance to the legislative audit and fiscal review committee.

SECTION 10. AMENDMENT. Section 54-44.2-04 of the North Dakota Century Code is amended and reenacted as follows:

54-44.2-04. Appointment of data processing information technology coordinators. Each agency, department, or institution of this state utilizing the services and equipment provided by the information services division shall appoint an electronic data processing information technology coordinator. The coordinator shall maintain liaison with the division and assist the division in such activities as the establishment of priorities, rescheduling, reports, and other areas related to making the most economical use of the data processing services and equipment information technology.

SECTION 11. AMENDMENT. Section 54-44.2-06 of the North Dakota Century Code is amended and reenacted as follows:

54-44.2-06. Secrecy provision Confidentiality. The personnel of the information services division may receive from the various departments, and the employees of the various departments may provide to the division, any information from the files and records of the various departments necessary to effect the purposes of this chapter without regard to the confidential or secret nature of the information; provided, however, the personnel of the division are is subject to the same restrictions and penalties regarding the dissemination of this information as are the personnel of the department involved.

SECTION 12. AMENDMENT. Section 54-44.2-07 of the North Dakota Century Code is amended and reenacted as follows:

54-44.2-07. Acceptance of federal and other funds. Funds received by a state agency or institution from the government of the United States for the purpose of matching state funds for the purpose of improving normal or emergency telecommunication systems may be deposited in the information services operating fund, unless the funds have been specifically appropriated by the legislative assembly for some other purpose or unless transfer would be contrary to the federal regulations governing the grant. The information services division may accept federal or other funds, which must be deposited in the information services operating fund and which may be spent subject to legislative appropriations. The director of the information services division may apply for any public or private grants available for the improvement of telecommunication systems information technology.

²⁴ **SECTION 13. 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 to assist in providing economical, efficient, and compatible access.

SECTION 14. REPEAL. Sections 15-65-04, 54-44.2-02.1, 54-44.2-02.2, 54-44.2-02.3, and 54-44.2-02.4 of the North Dakota Century Code and section 54-44.2-02.5 of the 1995 Supplement to the North Dakota Century Code are repealed.

SECTION 15. LEGISLATIVE INTENT - INFORMATION TECHNOLOGY STRATEGIC PLANS. It is the intent of the fifty-fifth legislative assembly that state agency information technology strategic plans include the following:

1. Each state agency information technology strategic plan should include an executive summary consisting of:
 - a. Proposed information technology direction for the agency.
 - (1) Overall information technology plan summary, including benefits and outcomes justifying the plan.
 - (2) The compatibility of the agency's plan with the statewide information technology plan (when complete).
 - (3) Major goals, objectives, timelines, and projected costs, by funding source.
 - (a) Short-term - The current biennium.
 - (b) Medium-term - One to three years (subsequent biennium).
 - (c) Long-term - Three to five years (second subsequent biennium).
 - (4) A summary of each major project in the plan which includes information on:

²⁴ Section 54-44.2-08 was also amended by section 22 of Senate Bill No. 2228, chapter 381.

- (a) Total project cost.
 - (b) Cost for each biennium, by funding source.
 - (c) Estimated development costs, including costs within the agency, information services division services required, and contract services needed.
 - (d) Estimated ongoing maintenance and support costs, including costs within the agency, information services division services required, and contract services needed.
 - (e) Personnel training costs.
 - b. Annual projections for five years of operational costs by funding source, including federal funds, of the agency's current information technology systems including full-time equivalent positions, information services division services, contract services, and training.
 - c. Information technology accomplishments, including major agency accomplishments relating to the agency's goals and objectives included in the previous information technology plan.
2. Each state agency information technology strategic plan should also include:
 - a. A description of the agency and a summary of services provided by the agency.
 - b. A list of current information technology systems of the agency, including:
 - (1) Major systems, including a description of the systems, the systems' capabilities to share information with other agencies and political subdivisions, and public access to information in the systems.
 - (2) Other systems, including a description of the systems, the systems' capabilities to share information with other agencies and political subdivisions, and public access to information in the systems.
 - (3) Projected annual operational and support costs by funding source, including federal funds for systems, for five years including projections relating to agency full-time equivalent positions, information services division services, the use of outside consultants, and employee training.
 - (4) An information technology inventory, including the cost of inventory.
 - (5) A description of the agency's information technology contract management system, including procedures used in securing contracts and monitoring procedures during the contract period.

- (6) A list of employee training methods relating to information technology.
 - (7) A disaster recovery plan for the agency's information technology systems.
- c. An assessment of current systems of the agency, including:
- (1) An analysis of the systems, including those aspects of the systems that work well and those that need improvement, including:
 - (a) In-office applications and services.
 - (b) Capability of sharing information with other agencies and political subdivisions.
 - (c) Availability of public access to information.
 - (2) Systems' requirements - Whether federal or state law affects systems' requirements and whether the systems must be approved by the federal government or other organization.
 - (3) Options for systems' modifications, if any are being considered.
- d. Information technology direction for the agency, including:
- (1) An overall agency information technology plans summary.
 - (2) A list of goals and objectives for the agency's information technology systems, including:
 - (a) Short-term - The current biennium.
 - (b) Medium-term - One to three years (subsequent biennium).
 - (c) Long-term - Three to five years (second subsequent biennium).
 - (d) Specific estimated costs by funding source, including federal funds, for each objective during the next three years and an estimated cost range for long-term goals and objectives, if a specific estimate is unavailable.
 - (e) Identification of plans to use agency employees, information services division, or outside consultants to accomplish each objective and, if applicable, the method of contracting which will be used.
 - (f) The benefits resulting from achieving the goals, including the effect on employee productivity and on agency services.

- (g) The impact on other agencies or users resulting from achieving the goals or objectives.
 - (h) Measurable outcomes that may be realized as a result of achieving the goals or objectives.
 - (3) For each major information technology project in the plan, specific information should be included on:
 - (a) A detailed cost-benefit analysis.
 - (b) Total project cost information, by year and by funding source.
 - (c) Project development costs, including costs within the agency, information services division services required, and contract services needed.
 - (d) Estimated ongoing maintenance and support costs, including costs within the agency, information services division services required, and contract services needed.
 - (e) Personnel training costs.
 - (f) Options for phasing in the project.
 - (g) Options for implementing only certain components of the project.
 - (4) A list of methods used by the agency to manage information technology costs and to ensure that the systems and services are cost effective.
 - (5) A review of the compatibility of the agency's plan with the statewide information technology plan (when complete) and with statewide information technology policies and standards (when established).
- e. Accomplishments in achieving information technology goals and objectives; including:
 - (1) A list of specific agency accomplishments relating to the agency's goals and objectives included in the previous information technology plan.
 - (2) A comparison of outcomes realized resulting from achieving goals and objectives compared to projected outcomes included in the previous plan.
 - (3) A comparison of actual project costs to project estimates included in the previous plan.

SECTION 16. LEGISLATIVE INTENT - GRANTS FOR THE CENTER FOR INNOVATION IN INSTRUCTION. It is the intent of the fifty-fifth legislative assembly that the funds appropriated for grants to the center for innovation in instruction be distributed by the board of higher education to support teacher and

school staff training in educational technology through the center for innovation in instruction.

SECTION 17. LEGISLATIVE INTENT - PRAIRIE PUBLIC BROADCASTING - MATCHING GRANTS. It is the intent of the fifty-fifth legislative assembly that prairie public broadcasting receive grants from the board of higher education. The grants are to be distributed four times each year, in July, October, January, and April. The grants must be fifty cents for each dollar raised by prairie public broadcasting during the three-month period ending in the month immediately preceding the month in which the grants must be distributed. In determining the amount of the grant, revenue from the following sources must be considered: membership contributions for prairie public television and prairie public radio from North Dakota residents, program underwriting contributions raised from organizations doing business in North Dakota, and fees received for the prairie on-line program. Grants may not exceed \$475,000 during any state fiscal year. If, as of June thirtieth of any year, the amount of grants distributed during the preceding twelve months is less than \$475,000, the undistributed amount available for that fiscal year must be deposited in the state general fund.

SECTION 18. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from other income, to the board of higher education for grants for the biennium beginning July 1, 1997, and ending June 30, 1999, as follows:

Grants - center for innovation in instruction	\$ 297,250
Grants - prairie public broadcasting	<u>950,000</u>
Total general fund appropriation	\$1,247,250

SECTION 19. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$466,960, or so much of the sum as may be necessary, to the legislative council for the purpose of defraying the expenses of its information technology program for the biennium beginning July 1, 1997, and ending June 30, 1999.

Approved April 11, 1997
 Filed April 11, 1997

CHAPTER 458

HOUSE BILL NO. 1237

(Representative Dorso)
(Senator G. Nelson)

ELECTRIC INDUSTRY COMPETITION COMMITTEE

AN ACT to establish an electric industry competition committee; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Electric industry competition - Need for study. The legislative council shall study the impact of competition on the generation, transmission, and distribution of electric energy within this state. The legislative assembly finds that the economy of this state depends on the availability of reliable, low cost, electric energy. There is a national trend toward competition in the generation, transmission, and distribution of electric energy and the legislative assembly acknowledges that this competition has both potential benefits and adverse impacts on this state's electric suppliers as well as on their shareholders and customers and the citizens of this state. The legislative assembly determines that it is in the best interests of the citizens of this state to study the effects of competition on the generation, transmission, and distribution of electric energy.

SECTION 2. Electric industry competition committee - Composition.

1. The legislative council shall appoint a committee to study electric industry competition.
2. The committee shall study the impact of competition on the generation, transmission, and distribution of electric energy within this state and on the state's electric suppliers.
3. As used in this Act, "electric suppliers" means public utilities regulated under title 49, rural electric cooperatives organized under chapter 10-13, municipal electric utilities organized under chapters 40-33 and 40-33.2, and power marketers.
4. The committee consists of:
 - a. Three or four members of the house of representatives, no more than two of whom may be from the same political party.
 - b. Three or four members of the senate, no more than two of whom may be from the same political party.
5. The chairman of the legislative council shall name one of the members as chairman.

SECTION 3. Electric industry competition committee - Study areas. The electric industry competition committee shall study this state's electric industry competition and electric suppliers and shall report to the legislative council in the

same manner as do other interim legislative council committees, concerning the following issues:

1. Financial issues, including:
 - a. The interests of residential customers, including:
 - (1) Fairness of rates, terms, and conditions of service for services chosen.
 - (2) Affordability of rates, bills, and services.
 - (3) Stability and predictability of rates and bills.
 - (4) Reliability and quality of power supply.
 - (5) Assurance that rates, terms, and conditions are nondiscriminatory.
 - (6) Ability of customers to understand potential energy choices.
 - (7) Importance of a fair dispute resolution process.
 - (8) Potential for rates to reflect the customer's desired level of energy reliability and availability.
 - b. The interests of small business customers, large business customers, shareholders, and other stakeholders, including:
 - (1) Fairness of rates, terms, and conditions of service for the services chosen by customers.
 - (2) Affordability of rates, bills, and services for customers.
 - (3) Stability and predictability of customers' rates and bills.
 - (4) Assurance that rates, terms, and conditions are nondiscriminatory for all customers.
 - (5) Ability of customers to understand potential energy choices and the implications of these choices.
 - (6) Importance of a fair dispute resolution process for customers.
 - (7) Potential for rates to reflect the customer's desired level of energy reliability and availability.
 - c. Financial integrity of and cost of capital to electric power suppliers.
 - d. Taxes paid by electric suppliers, including franchise taxes, excise taxes, income taxes, ad valorem taxes, in lieu taxes, and real and personal property taxes.
 - e. Tax implications to local governments.

- f. Quantification and recovery of stranded investments by electric power suppliers, including those resulting from:
 - (1) Customers who have a legal obligation to bear certain costs, who find a way to avoid those obligations, and who leave without paying costs incurred on the customer's behalf; and
 - (2) The costs of investments that exceed their value in the competitive market.
 - g. Pricing of transmission and distribution services.
 - h. Pricing and rate subsidies for all classes of customers.
 - i. Unbundling of costs of services.
2. Legal issues, including:
- a. State, tribal, and federal jurisdiction.
 - b. State statutory and regulatory constraints and oversight of the electric industry.
 - c. Those related to the federal energy regulatory commission.
 - d. Commerce clause constraints.
 - e. Review of existing state laws, rules, and constitutional provisions that affect the generation, transmission, and distribution of electric energy, including the need and appropriateness of regulatory reforms for services that will continue to be provided by a regulated utility.
 - f. Interstate reciprocity and the regional nature of the industry.
 - g. Continuing obligations of an electric supplier to serve customers.
 - h. Use and protection of proprietary information in a competitive market.
3. Social issues, including:
- a. Planning and operation of electric suppliers, including integrated resource planning.
 - b. Efficiency and sufficiency of an aggregate supply of energy.
 - c. Environmental impacts.
 - d. Impact on the development and use of renewable resources.
 - e. Appropriate and proper method of recovery of the cost of social, low income, and noneconomic renewable energy programs in order to ensure that costs are fairly and equitably shared among all customers of electric energy.

4. Issues related to system planning, operation, and reliability, including:
 - a. Electric system reliability.
 - b. Provisions by which customers would be permitted to have a choice of generation providers.
 - c. Applicability of regulatory reliability criteria to nonutility market participants.
 - d. Form and requirements of contracts for the sale and purchase of electric energy.
 - e. Requirements for metering energy usage at the customer's location.
 - f. Designation and regulation of ancillary services.
5. Identification and review of potential market structures, including:
 - a. Possible market structures for a deregulated generation market and transmission market and whether these structures should be mandated or allowed to form voluntarily.
 - b. Formation of market segments in response to customer requirements.
 - c. Impact on the investment stability of the electric utility industry.
 - d. Impact on multipurpose entities.
 - e. Potential to improve economic efficiency.
 - f. Size of the market and the extent to which its size impacts the level of benefits for customers or groups of customers.
 - g. Ability of participants with control over the electricity generation and transmission system to exercise market power over pricing or the need for controls to prevent the exercise of market power.
 - h. Controls or bans on corporate relationships between regulated utilities and emerging competitive sectors.
 - i. Barriers to achieving nondiscriminatory competition among electric suppliers, including review of federal and state tax issues, availability of federal subsidies to certain energy suppliers, application of federal laws that impose regulatory requirements on the electric utility industry, and jurisdiction of the federal energy regulatory commission over competitors.
 - j. Viability of all customers to participate in and benefit from a competitive electricity market, including:
 - (1) Risks and responsibilities that customers or classes of customers incur by participating in a competitive market.

- (2) Costs of gathering, processing, and managing information on the price and quality of electricity.
 - (3) Benefits to customers or classes of customers from participation in a competitive electricity market.
6. Whether and to what extent power produced by the Garrison dam should be taxed by the state.
7. The source and cost of power supplied to the state's Indian reservations.
8. Other issues related to the generation, transmission, and distribution of electric energy.

SECTION 4. EXPIRATION DATE. This Act is effective through August 1, 2003, and after that date is ineffective.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 23, 1997
Filed March 24, 1997

CHAPTER 459

SENATE BILL NO. 2088

(Appropriations Committee)

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

STATE PURCHASING

AN ACT to amend and reenact subsection 1 of section 54-44-11, sections 54-44.4-02, and 54-44.4-03 of the North Dakota Century Code, relating to providing a continuing appropriation from the state purchasing operating fund, delegation of purchasing authority by the director of the office of management and budget, and cooperation with political subdivisions for purchasing; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 54-44-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The office of management and budget shall establish a state purchasing operating fund to be used for the procurement and maintenance of an inventory of equipment and supplies for the state departments and agencies. Funds in the state purchasing operating fund are hereby appropriated on a continuing basis and may be spent by the office of management and budget for the procurement and maintenance of an inventory of equipment and supplies as provided in this subsection. The director of the office of management and budget shall transfer any unobligated balance in the fund, in excess of one hundred twenty-five thousand dollars, to the state general fund at the end of each fiscal year.

SECTION 2. AMENDMENT. Section 54-44.4-02 of the North Dakota Century Code is amended and reenacted as follows:

54-44.4-02. Office of management and budget purchasing services. The office of management and budget shall purchase or lease or otherwise arrange for the procurement, for all state agencies and institutions in the executive branch of state government, all materials, furniture, fixtures, printing, insurance, and other commodities, except the following:

1. Land, buildings, space, or the rental thereof.
2. Telephone and telegraph service, and electrical light and power services.
3. Public books, maps, periodicals, and technical pamphlets.
4. Department of transportation materials, equipment, and supplies in accordance with the provisions of chapters 24-02 and 24-03.
5. Professional services pursuant to written contract.
6. Services for the maintenance or servicing of equipment by the manufacturer or authorized servicing agent of that equipment where the

maintenance or servicing can best be performed by the manufacturer or authorized service agent, or where such a contract would otherwise be advantageous to the state.

7. Emergency purchases the office of management and budget cannot make within the required time and which involve public health or public safety, or where immediate expenditures are necessary for repairs of state property to protect it against further loss or damage, or to prevent or minimize serious disruption in state services.
8. Such specific items or items costing less than a specified amount as determined and indicated by written directive by the director of the office of management and budget.

The office of management and budget shall purchase items as requested by agencies and institutions under the jurisdiction of the state board of higher education and the legislative and judicial branches of state government. The agencies and institutions under the jurisdiction of the state board of higher education ~~shall, together~~ with the office of management and budget, shall make such joint purchases of like items of high common usage as determined jointly by the agencies and institutions under the jurisdiction of the state board of higher education and the office of management and budget as will result in less cost to the state. The office of management and budget, pursuant to terms and conditions imposed by it, may agree with political subdivisions that have organized a purchasing group pursuant to a joint powers agreement under chapter 54-40.3 to cooperatively purchase certain specific items designated by the office of management and budget if the cooperative purchase will result in a benefit to the state and to the political subdivisions participating in the joint powers agreement.

SECTION 3. AMENDMENT. Section 54-44.4-03 of the North Dakota Century Code is amended and reenacted as follows:

54-44.4-03. Director of the office of management and budget may delegate purchasing authority. The director of the office of management and budget may delegate to state agencies and institutions the authority to make purchases of items not otherwise exempted by law ~~when the purchases are necessary due to an agency being able to obtain a lower price with equal quality, the perishability of items, or the location of the items.~~ Any delegation of purchasing authority must be in writing and must ~~indicate~~ specify what is to may be purchased by the agency or institution and the duration of the delegation.

Approved April 9, 1997
Filed April 10, 1997

CHAPTER 460**HOUSE BILL NO. 1125**

(Government and Veterans Affairs Committee)

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

INSURANCE PROCEEDS EXPENDITURE

AN ACT to create and enact a new section to chapter 54-44.1 of the North Dakota Century Code, relating to agency authority to expend insurance proceeds; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-44.1 of the North Dakota Century Code is created and enacted as follows:

Insurance recoveries appropriated. Any payment to a state budget unit for a loss under chapter 26.1-22 or for any loss covered by any property and casualty insurance is hereby appropriated to that budget unit to be used solely for the repair, rebuilding, or replacement of the destroyed or damaged building, property, or equipment. Insurance proceeds may be used for purposes other than the repair, rebuilding, or replacement of the destroyed property with the approval of the emergency commission or as appropriated by the legislative assembly.

Approved March 5, 1997

Filed March 6, 1997

CHAPTER 461

SENATE BILL NO. 2114

(Government and Veterans Affairs Committee)
(At the request of the Central Personnel Division)

MERIT SYSTEM GRANTS AND APPOINTMENT

AN ACT to create and enact two new sections to chapter 54-44.3 and a new subsection to section 54-44.3-12 of the North Dakota Century Code, relating to federal grants for merit systems, agencies subject to the state merit system, and the rules for merit system compliance; to amend and reenact sections 39-03-03, 39-03-13, 52-02-01, 52-02-06, 54-44.3-06, 54-44.3-09, 57-01-05, and 65-02-01 of the North Dakota Century Code, relating to appeals of highway patrol disciplinary actions, job service North Dakota merit appointments, personnel board meetings, duties of the central personnel division director with respect to the merit system, tax commissioner merit appointments, and workers' compensation merit appointments; and to repeal chapter 54-42 of the North Dakota Century Code, relating to the merit system council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-03-03 of the North Dakota Century Code is amended and reenacted as follows:

39-03-03. Patrolmen - Appointment - Removal - Duties. The superintendent, the assistant superintendent, and the patrolmen ~~shall~~ constitute the highway patrol. The highway patrol shall enforce the provisions of the laws of this state relating to the protection and use of highways and shall patrol ~~such~~ the highways and cooperate with sheriffs and police in enforcing the laws regulating the operation of vehicles and the use of highways. All patrolmen and the assistant superintendent must be appointed by the superintendent. Each patrolman so appointed ~~must be~~ is deemed a temporary appointee for a period of twelve months, during which period ~~he~~ the patrolman must be placed under probationary training and service and is subject to dismissal at the will of the superintendent. At the end of ~~such~~ the twelve-month period, ~~such~~ a temporary appointee must either be given a permanent appointment by the superintendent or must be automatically dismissed. The assistant superintendent and patrolmen who have received a permanent appointment are subject to removal for cause by the superintendent, but must be permitted to appeal a dismissal ~~to the North Dakota merit system council in accordance with rules and regulations promulgated under subsection 7 of section 54-42-03 under chapter 54-44.3,~~ provided that the removal of the assistant superintendent from ~~his~~ that person's position does not entitle ~~him~~ that person to appeal ~~such~~ the removal unless ~~he~~ that person is also dismissed from the patrol.

SECTION 2. AMENDMENT. Section 39-03-13 of the North Dakota Century Code is amended and reenacted as follows:

39-03-13. Additional powers of superintendent. In addition to ~~his~~ the superintendent's powers as a member of the highway patrol, the superintendent of the patrol has the following powers as administrative head of the patrol:

1. ~~He~~ The superintendent may organize the patrol into ~~such~~ divisions, bureaus, and districts as ~~he~~ the superintendent deems necessary.

2. ~~He~~ The superintendent may designate ranks, fix salaries with appropriate allowances for those ranks, and establish promotional procedures.
3. ~~He~~ The superintendent may take reasonable disciplinary action against members of the patrol for inefficiency, misconduct, insubordination, or violation of an established rule ~~or regulation~~, whenever ~~he~~ the superintendent deems ~~such~~ the actions necessary, provided that:
 - a. Where demotion in rank is summarily ordered against a member of the patrol as a disciplinary measure, to be limited to a one-grade reduction in rank, ~~such the~~ the order is appealable ~~to the North Dakota merit system council in accordance with rules and regulations promulgated under subsection 7 of section 54-42-03~~ under chapter 54-44.3.
 - b. Where a reduction in pay of a member of the patrol is summarily ordered as a disciplinary measure, it must be limited to one year's duration and ~~such the~~ the order is appealable ~~to the North Dakota merit system council in accordance with rules and regulations promulgated under subsection 7 of section 54-42-03~~ under chapter 54-44.3.
 - c. Suspension of pay for a member of the patrol for a period not exceeding seven days may be summarily ordered as a disciplinary measure, but an order for suspension of pay for a longer period is appealable ~~to the North Dakota merit system council in accordance with rules and regulations promulgated under subsection 7 of section 54-42-03~~ under chapter 54-44.3.
4. ~~Such~~ A suspension of pay for a member of the patrol may be summarily ordered not more than twice in one year as separate disciplinary measures, except that further suspensions are appealable ~~to the North Dakota merit system council in accordance with rules and regulations promulgated under subsection 7 of section 54-42-03~~ under chapter 54-44.3.

SECTION 3. AMENDMENT. Section 52-02-01 of the North Dakota Century Code is amended and reenacted as follows:

52-02-01. Job service North Dakota created. There is hereby created job service North Dakota which is ~~herewith~~ charged with administering the provisions of the North Dakota Unemployment Compensation Law and the provisions of the North Dakota state employment service, as set forth in chapter 52-08, which must be administered by a full-time salaried executive director, who is subject to the supervision and direction of the governor. The governor is authorized to appoint, fix the compensation of, and prescribe the duties of ~~such the~~ the executive director, provided that ~~such the~~ the appointment must be made on a nonpartisan, merit basis; ~~in accordance with the provisions set forth in chapter 54-42.~~ The duties and responsibilities of the executive director extend to and include the power of full administration of the provisions of the North Dakota Unemployment Compensation Law, and the provisions of chapter 52-08 relating to the North Dakota state employment service, including job insurance programs, and the establishment and maintenance of free public employment offices. The executive director may also establish ~~such~~ separate divisions and make ~~such~~ separate appointments as ~~he may deem~~ the executive director deems advisable for efficient administration of the duties

and responsibilities imposed hereunder. Any ~~such~~ separate appointments must be on a nonpartisan, merit basis.

SECTION 4. AMENDMENT. Section 52-02-06 of the North Dakota Century Code is amended and reenacted as follows:

52-02-06. Merit system and personnel.

1. In accordance with chapter ~~54-42~~ 54-44.3 and rules adopted thereunder and on the basis of the authority granted under section 52-02-02, the bureau shall select and prescribe the duties and powers of ~~such~~ officers, employees, and other persons as may be necessary in the performance of its duties under the chapter; provided, that in cooperation with the ~~North Dakota merit system~~ central personnel division the bureau shall take such action as may be necessary to meet the personnel standards ~~promulgated~~ adopted by the secretary of labor pursuant to the Social Security Act [42 U.S.C. 301 et seq.] and the Wagner-Peyser Act [48 Stat. 113; 29 U.S.C. 49-49k], both as amended.
2. Notwithstanding any provision of law to the contrary, the bureau shall have authority to dismiss without notice any person employed in the administration of the North Dakota Unemployment Compensation Law upon receipt of notice of a determination by the United States civil service commission that ~~such~~ that person has violated the provisions of the Act of the Congress of the United States entitled "An Act to prevent pernicious political activities", as amended [18 U.S.C. 61(a)] and that ~~such~~ the violation warrants the removal of ~~such~~ that person from ~~his~~ employment.

SECTION 5. AMENDMENT. Section 54-44.3-06 of the North Dakota Century Code is amended and reenacted as follows:

54-44.3-06. Meetings. The board shall organize annually at the first meeting of each fiscal year. It shall meet at least ~~six times~~ once a year and at such times and places as are specified by call of the chairman or any three members of the board. All meetings must be open to the public. Three members ~~shall~~ constitute a quorum for the transaction of business. Three favorable votes are necessary for the passage of any resolutions or taking of any official action by the board at any meeting.

SECTION 6. AMENDMENT. Section 54-44.3-09 of the North Dakota Century Code is amended and reenacted as follows:

54-44.3-09. Board secretariat. ~~The director shall serve as secretary to the board in a nonvoting capacity.~~ The division shall serve as the secretariat to the board.

SECTION 7. A new subsection to section 54-44.3-12 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

Adopt rules, subject to the approval of the board, to ensure compliance with and resolve compliance issues relating to agencies required by state or federal law or rule to be subject to a merit personnel system.

SECTION 8. A new section to chapter 54-44.3 of the North Dakota Century Code is created and enacted as follows:

Acceptance of federal funds. The director is authorized to accept federal funds through grant-aided agencies or directly for the purpose of operating or ensuring operation of a merit personnel system.

SECTION 9. A new section to chapter 54-44.3 of the North Dakota Century Code is created and enacted as follows:

Agencies subject to merit system. All personnel employed by the department of human services, the regional offices of that department, job service North Dakota, the central personnel division, the state department of health, and other agencies or political subdivisions as may by federal law or rule be required to be subject to a merit system in order to obtain federal grants-in-aid are covered by the merit system provided in this chapter. Merit system coverage must also be provided to personnel employed as purchasing agents or buyers in the purchasing division of the office of management and budget. Other agencies, departments, or divisions and positions must be placed under a merit system in the manner and to the extent required by law.

SECTION 10. AMENDMENT. Section 57-01-05 of the North Dakota Century Code is amended and reenacted as follows:

57-01-05. State supervisor of assessments. The state tax commissioner shall appoint from a list of qualified applicants forwarded to him by the North Dakota merit system council a supervisor of assessments who must be a person trained and experienced in property appraisals and familiar with assessment and equalization procedures and techniques. ~~If the tax commissioner does not desire to appoint a supervisor of assessments from the list of candidates forwarded to him by the merit system council, he may request additional lists of qualified applicants from the council.~~ The supervisor of assessments shall ~~serve~~ serve at the pleasure of the state tax commissioner and office space must be furnished ~~him~~ to the supervisor of assessments by the commissioner.

The supervisor of assessments shall perform the following duties under the direction of the tax commissioner:

1. ~~He~~ The supervisor of assessments shall advise and give the various assessors in the state the necessary instructions and directions as to their duties under the laws of this state, to the end that a uniform assessment of all real and personal property in this state will be attained.
2. ~~He~~ The supervisor of assessments shall assist and instruct the various assessors in this state in the use of soil reconnaissance surveys, land classification methods, in the preparation and proper use of land maps and record cards, in the proper classification of real and personal property, and in the determination of proper standards of value.
3. ~~He has authority to~~ The supervisor of assessments may require the attendance of groups of assessors at meetings called by ~~him~~ the supervisor of assessments for the purpose of giving them further assistance and instruction as to their duties.
4. ~~He~~ The supervisor of assessments may make sales, market, and productivity studies and other studies of property assessments in the various counties and cities of this state for the purpose of properly advising the various assessors and directors of tax equalization in the state and for the purpose of recommending to the tax commissioner

changes to be made by the state board of equalization in the performance of the equalization powers and duties prescribed for it by section 57-13-04. In any sales, market, and productivity study made according to section 57-01-06, the county directors of tax equalization or city assessors, as the case may be, are responsible for compiling a record of sales of property made in ~~such~~ the county or city, and in conjunction with the county commissioners shall analyze ~~such~~ the sales for the purpose of advising the state supervisors of assessments as to the value of using ~~such~~ the sales in any such study. ~~Such~~ The compilations must be forwarded to the state supervisor of assessments with the findings of the county director of tax equalization, city assessors, and the board of county commissioners. In any county or city or any part thereof where the number of sales of properties is insufficient for making a sales, market, and productivity study, the county director of tax equalization or city assessor, as the case may be, in cooperation with the state supervisor of assessments or ~~his~~ that person's assistants shall make appraisals of properties in order to determine the market value.

5. ~~He~~ The supervisor of assessments shall cooperate with ~~the~~ North Dakota state university of agriculture and applied science in the development of a soil mapping program, a land classification system, valuation studies, and other matters relating to the assessment of property, and shall provide for the use of such information and procedure at the earliest possible date by the assessors of this state.
6. ~~He~~ The supervisor of assessments has general supervision of assessors and county directors of tax equalization pertaining to methods and procedures of assessment of all property and has authority to require all county directors of tax equalization to do any act necessary to obtain uniform methods and procedures of assessment.
7. ~~He~~ The supervisor of assessments shall perform such other duties relating to assessment and taxation of property as the tax commissioner ~~shall direct~~ directs.

²⁵ **SECTION 11. AMENDMENT.** Section 65-02-01 of the North Dakota Century Code is amended and reenacted as follows:

65-02-01. Workers compensation bureau - Executive director. The bureau must be maintained for the administration of this title. The governor shall appoint the director of the bureau who is subject to the supervision and direction of the governor and who ~~shall serve~~ serves at the pleasure of the governor. The appointment must be on a nonpartisan, merit basis; ~~in accordance with chapter 54-42.~~ The governor shall set the compensation and prescribe the duties of the director. The director may appoint the director of any division of the bureau which is established by the director. The appointment of a division director must be on a nonpartisan, merit basis.

²⁵ Section 65-02-01 was also amended by section 2 of House Bill No. 1440, chapter 528.

SECTION 12. REPEAL. Chapter 54-42 of the North Dakota Century Code is repealed.

Approved March 25, 1997

Filed March 26, 1997

CHAPTER 462

SENATE BILL NO. 2237

(Senators DeMers, Krebsbach, Lips, W. Stenehjem)
(Representatives Maragos, Wentz)

COMMUNITY ACTION AGENCIES

AN ACT to create and enact two new sections to chapter 54-44.5 of the North Dakota Century Code, relating to community action agencies; and to amend and reenact section 54-44.5-01 of the North Dakota Century Code, relating to the office of intergovernmental assistance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-44.5-01 of the North Dakota Century Code is amended and reenacted as follows:

54-44.5-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Community action agency" means a not-for-profit corporation that has authority under its charter and bylaws to receive funds to administer community action programs and which was officially designated as a community action agency or a community action program under section 210 of the Economic Opportunity Act of 1964 [Pub. L. 88-452; 78 Stat. 508; 42 U.S.C. 2701 et seq.], unless the community action agency or a community action program lost its designation as a result of failure to comply with the provisions of the federal act.
2. "Community action program" means a community-based and operated program that includes an intake assessment and referral capability in each of its counties and is designed to include a number of projects or components to provide a range of services and activities having a measurable and potentially major impact on causes and conditions of poverty in the community or those areas of the community where poverty is a particularly acute problem. These services and activities may include activities designed to provide opportunities for eligible persons to:
 - a. Secure and retain meaningful employment;
 - b. Attain an adequate education;
 - c. Make better use of available income;
 - d. Obtain and maintain adequate housing and suitable living environment;
 - e. Obtain emergency assistance through grants and loans to meet immediate and urgent individual and family needs, including the need for health services, nutritious food, housing, and employment-related assistance;

- f. Maximize the role community action agencies play in supportive mechanisms available to North Dakota families;
 - g. Remove obstacles and solve problems that block achievement of self-sufficiency;
 - h. Achieve greater participation in the affairs of the community; and
 - i. Make more effective use of other programs.
3. "Director" means the director of the office of intergovernmental assistance.
2. 4. "Office" means the office of intergovernmental assistance.

SECTION 2. Two new sections to chapter 54-44.5 of the North Dakota Century Code are created and enacted as follows:

Community action agency board of directors - Qualifications - Powers - Duties. Each community action agency must have a board of directors, as provided by the bylaws of the corporation, of not less than nine nor more than fifty-one members. One-third of the members of the board must be elected public officials, currently holding office, or their representatives, except that if the number of elected officials reasonably available and willing to serve is less than one-third of the membership of the board, membership on the board by appointive public officials may be counted in meeting the one-third requirement. At least one-third of the members must be persons chosen in accordance with democratic selection procedures adequate to assure that they are representative of the poor in the area served, and the remainder of the members must be officials or members of business, industry, labor, religious, welfare, education, or other major groups and interests in the community. The board shall determine personnel, fiscal, and program policies and shall approve proposals of financial assistance and the disbursement of funds.

Funding - Community action agency's share of funds - How determined.

1. If the Congress of the United States approves a block grant system to fund social programs, the state may use, subject to legislative appropriation, the block grant funds or in-kind services to provide a level of financial assistance for community action agencies to carry out community action programs through the community services block grants pursuant to the federal Community Services Block Grant Act [Pub. L. 97-35; 95 Stat. 511; 42 U.S.C. 9903] and other federal funding sources that may be appropriate.
2. The office shall distribute the federal community services block grant funds received under the federal Community Service Block Grant Act [Pub. L. 97-35; 95 Stat. 511; 42 U.S.C. 9903] and shall allocate the funds as follows:
 - a. At least ninety percent must be allocated to community action agencies;
 - b. The greater of fifty-five thousand dollars or five percent may be allocated for state administrative expenses; and

- c. Not more than five percent may be allocated for state discretionary projects.
- 3. Each community action agency, in accordance with procedures established by the office, is entitled to receive a portion of available federal Community Services Block Grant Act [Pub. L. 97-35; 95 Stat. 511; 42 U.S.C. 9903] funds based on that agency's poverty population relative to the state's total poverty population. The office shall determine poverty levels using criteria established by the United States office of management and budget.
- 4. Each community action agency is governed by procedures established by the office as it relates to the community services block grant program.

Approved April 3, 1997

Filed April 3, 1997

CHAPTER 463

HOUSE BILL NO. 1137

(Government and Veterans Affairs Committee)

(At the request of the Public Employees Retirement System)

STATE RETIREMENT DATE AND BENEFITS

AN ACT to amend and reenact subdivision a of subsection 3 and subdivisions a and e of subsection 4 of section 54-52-17, sections 54-52-17.5, and 54-52-17.10 of the North Dakota Century Code, relating to normal retirement date, computation of benefits, disability retirement benefits, postretirement adjustments, and prior service retiree adjustments under the public employees retirement system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁶ **SECTION 1. AMENDMENT.** Subdivision a of subsection 3 of section 54-52-17 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. Normal retirement date, except for a national guard security officer or firefighter, is:
 - (1) The first day of the month next following the month in which the member attains the age of sixty-five years; or
 - (2) When the member has a combined total of years of service credit and years of age equal to ~~eighty-eight~~ eighty-five and has not received a retirement benefit under this chapter.

²⁷ **SECTION 2. AMENDMENT.** Subdivisions a and e of subsection 4 of section 54-52-17 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- a. Normal retirement benefits for all retirees, except supreme and district court judges, reaching normal retirement date equal an annual amount, payable monthly, comprised of a service benefit and a prior service benefit, as defined in this chapter, which is determined as follows:
 - (1) Service benefit equals one and ~~seventy-four~~ seventy-seven hundredths percent of final average salary multiplied by the number of years of service employment.

²⁶ Section 54-52-17 was also amended by section 2 of House Bill No. 1137, chapter 463, and section 38 of Senate Bill No. 2046, chapter 51.

²⁷ Section 54-52-17 was also amended by section 1 of House Bill No. 1137, chapter 463, and section 38 of Senate Bill No. 2046, chapter 51.

- (2) Prior service benefit equals one and ~~seventy-four~~ seventy-seven hundredths percent of final average salary multiplied by the number of years of prior service employment.
 - (3) All participants who retired before ~~January 4, 1994~~ August 1, 1997, are entitled to benefits calculated at one and ~~seventy-four~~ seventy-seven hundredths percent of final average salary, multiplied by the number of years of service employment, with the increased benefits payable beginning ~~January 4, 1994~~ August 1, 1997.
- e. Disability retirement benefits are twenty-five percent of the member's final average salary. The minimum monthly disability retirement benefit under this section is one hundred dollars. A participant who, on July 31, 1997, is receiving disability retirement benefits that are not based upon the benefit multiplier is entitled to receive an increase in benefits equal to five percent of the individual's present benefit with the increased benefits payable beginning August 1, 1997.

SECTION 3. AMENDMENT. Section 54-52-17.5 of the North Dakota Century Code is amended and reenacted as follows:

54-52-17.5. Postretirement adjustments. An individual who, on ~~June 30, 1989~~ July 31, 1997, is receiving retirement benefits under ~~this chapter~~ subdivision a of subsection 4 of section 54-52-17 is entitled to receive an increase in benefits equal to ~~five and seventy-six hundredths~~ three percent of the individual's present benefit with the increase payable beginning August 1, 1997.

SECTION 4. AMENDMENT. Section 54-52-17.10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52-17.10. Prior service retiree adjustment. Prior service retirees who are receiving benefits under this chapter on ~~December 31, 1993~~ July 31, 1997, are entitled to receive an increase in benefits equal to ~~one~~ five percent of the individual's present benefit, with the increased benefits payable beginning ~~January 4, 1994~~ August 1, 1997. A prior service retiree is a former participating employee who receives a supplemental monthly payment from the retirement system based upon the original prior service credit system.

Filed April 7, 1997

NOTE: The Governor's veto of House Bill No. 1137 was not sustained. For the text of the Governor's veto message see chapter 557.

CHAPTER 464

HOUSE BILL NO. 1140

(Government and Veterans Affairs Committee)

(At the request of the Public Employees Retirement System)

PERS ADMINISTRATION

AN ACT to amend and reenact subsection 3 of section 39-03.1-10.1, section 39-03.1-30, subsection 5 of section 54-52-17.4, sections 54-52-17.8, 54-52-26, 54-52-27, and 54-52.2-03 of the North Dakota Century Code, relating to purchase of service credit for veterans and purchase of sick leave under the highway patrolmen's retirement system, purchase of service credit, benefit limitations, confidentiality of records, conversion of sick leave under the public employees retirement system, and administration of the deferred compensation program; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 39-03.1-10.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. A member may elect to purchase qualified military service credit pursuant to the Veterans' Reemployment Rights Act [Pub. L. 93-508; 88 Stat. 1594; 38 U.S.C. 2024 et seq.] Uniformed Services Employment and Reemployment Rights Act of 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307] at any time prior to retirement by submitting a valid application and paying the member portion pursuant to rules adopted by the board. It is the responsibility of the applicant to supply any documentation required by the board.

SECTION 2. AMENDMENT. Section 39-03.1-30 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-03.1-30. Conversion of sick leave. At termination of eligible employment a member is entitled to credit in the retirement system for each month of unused sick leave, as certified by the employer, if the member pays an amount equal to the member's final average salary, times the number of months of sick leave converted, times the employer and employee contribution, plus one percent for the retiree health benefits program. Hours of sick leave equal to a fraction of a month are deemed to be a full month for purposes of conversion to service credit. A member may convert all of the member's certified sick leave or a part of that person's certified sick leave. All conversion payments must be made within sixty days of termination and before the member receives a retirement annuity unless the member has submitted an approved payment plan to the board.

SECTION 3. AMENDMENT. Subsection 5 of section 54-52-17.4 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. A participating member, or a member not presently under covered employment, may request credit for qualified military service pursuant to the Veterans' Reemployment Rights Act [Pub. L. 93-508; 88 Stat. 1594;

~~38 U.S.C. 2024 et seq.~~ Uniformed Services Employment and Reemployment Rights Act of 1994 [Pub.L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307]. The member shall submit a qualified application with proof of eligible military service to the board in order to receive credit for military service. For credit on and after July 1, 1966, the member must pay four percent times the member's most recent monthly salary, times the number of months of credit being purchased, plus interest at a rate determined by the board. In addition, the governmental unit, or in the case of a member not under covered employment the last employing governmental unit, shall pay to the retiree health benefits fund established under section 54-52.1-03.2 one percent times the member's present monthly salary times the member's months of credit being purchased. For credit before July 1, 1966, no contribution is required.

SECTION 4. AMENDMENT. Section 54-52-17.8 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52-17.8. Benefit limitations. Benefits with respect to a member of the public employees retirement system on or after January 1, 1990, may not exceed the maximum benefits specified under section 415 of the Internal Revenue Code [26 U.S.C. 415] for governmental plans. ~~This section constitutes an election under section 415(b)(10)(C) of the Internal Revenue Code [26 U.S.C. 415(b)(10)(C)] with respect to a member who first became a member before January 1, 1990.~~

SECTION 5. AMENDMENT. Section 54-52-26 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52-26. Confidentiality of records. All records relating to the retirement benefits of a member or a beneficiary under this chapter and chapter 54-52.2 are confidential and are not public records. This section does not prohibit any party from obtaining this information from other agencies or governmental sources. Information and records may be disclosed, under rules adopted by the board, only to:

1. A person to whom the member has given written consent to have the information disclosed.
2. A person legally representing the member, upon proper proof of representation, and unless the member specifically withholds consent.
3. A person authorized by a court order.
4. A member's participating employer, limited to information concerning the member's years of service credit and years of age. Any information provided to the member's participating employer under this subsection must remain confidential.

SECTION 6. AMENDMENT. Section 54-52-27 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52-27. Conversion of sick leave. At termination of eligible employment a member is entitled to credit in the retirement system for each month of unused sick leave, as certified by the member's employer, if the member pays an amount equal to the member's final average salary, times the number of months of sick leave converted, times the percent of employer and employee contributions to the

retirement program of the member, plus one percent for the retiree health benefits program. Hours of sick leave equal to a fraction of a month are deemed to be a full month for purposes of conversion to service credit. A member may convert all of the member's certified sick leave or a part of the member's certified sick leave. All conversion payments must be made within sixty days of termination of employment and before the member receives a retirement annuity unless the member has submitted an approved payment plan to the board.

SECTION 7. AMENDMENT. Section 54-52.2-03 of the North Dakota Century Code is amended and reenacted as follows:

54-52.2-03. Deferred compensation program - Administration - Contract for services. The administration of the deferred compensation program for each state agency, department, board, commission, or institution is under the direction of the public employees retirement board. Each county, city, or other political subdivision shall designate an officer to administer the deferred compensation program or appoint the public employees retirement board to administer the program ~~in~~ on its behalf. Payroll reductions must be made in each instance by the appropriate payroll officer. The public employees retirement board shall administer the deferred compensation program based on a plan in compliance with the appropriate provisions of the Internal Revenue Code and regulations adopted under those provisions. Not later than January 1, 1999, all plan assets and income must be held in trust, custodial accounts, or contracts as described in section 401(f) of the Internal Revenue Code [26 U.S.C. 401(f)] for the exclusive benefit of participants and their beneficiaries as required by section 457 of the Internal Revenue Code [26 U.S.C. 457]. Once the trust, custodial account, or contract is established as required by this section, the board shall act as fiduciary of the plan to the extent required by section 457 of the Internal Revenue Code [26 U.S.C. 457] and the board is authorized to do all things necessary for the proper administration of the plan to ensure that the plan maintains its qualified status.

SECTION 8. RETROACTIVE APPLICATION OF ACT. Section 4 of this Act is retroactive to July 3, 1991.

Approved March 26, 1997
Filed March 26, 1997

CHAPTER 465

HOUSE BILL NO. 1138

(Government and Veterans Affairs Committee)
(At the request of the Public Employees Retirement System)

JUDGES POSTRETIREMENT ADJUSTMENTS

AN ACT to create and enact a new section to chapter 54-52 of the North Dakota Century Code, relating to postretirement adjustments for supreme and district court judges under the public employees retirement system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-52 of the North Dakota Century Code is created and enacted as follows:

Judges postretirement adjustments. A supreme or district court judge who, on December 31, 1997, is receiving retirement benefits under subdivision b of subsection 4 of section 54-52-17 is entitled to receive an increase in benefits equal to two percent of the individual's present benefits with the increase payable beginning January 1, 1998. A supreme or district court judge who, on December 31, 1998, is receiving retirement benefits under subdivision b of subsection 4 of section 54-52-17 is entitled to receive an increase in benefits equal to two percent of the individual's present benefits with the increase payable beginning January 1, 1999.

Approved April 1, 1997
Filed April 2, 1997

CHAPTER 466**HOUSE BILL NO. 1141**

(Government and Veterans Affairs Committee)

(At the request of the Public Employees Retirement System)

RETIREE HEALTH BENEFIT OPTIONS

AN ACT to create and enact a new subsection to section 54-52.1-03.3 of the North Dakota Century Code, relating to benefit options under the retiree health benefits plan; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 54-52.1-03.3 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

The board may, as an alternative to the calculation of the allowable monthly credit under subsection 2, provide actuarially reduced benefit options for the member and the member's surviving spouse including a one hundred percent joint and survivor option, a fifty percent joint and survivor option, or a five-year or ten-year certain option.

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

Approved April 1, 1997

Filed April 2, 1997

CHAPTER 467

SENATE BILL NO. 2034

(Legislative Council)
 (Employee Benefits Programs Committee)
 (Senators Krebsbach, C. Nelson)
 (Representatives Wardner, Sabby)

EMPLOYEE ASSISTANCE PROGRAM

AN ACT to amend and reenact sections 54-52.1-04 and 54-52.1-04.9 of the North Dakota Century Code, relating to employee assistance program benefits coverage under the uniform group insurance program; to provide for transition; to provide an effective date; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-52.1-04 of the North Dakota Century Code is amended and reenacted as follows:

54-52.1-04. Board to contract for insurance. The board shall receive bids for the providing of hospital benefits coverage, medical benefits coverage, ~~and~~ life insurance benefits coverage for a specified term, and employee assistance program services, and shall accept the bid of and contract with the carrier that in the judgment of the board ~~shall best serve~~ serves the interests of the state and its eligible employees. ~~A solicitation for bids must be made within ninety days of July 1, 1971. Subsequent solicitations~~ Solicitations must be made not later than ninety days ~~prior to~~ before the expiration of an existing uniform group insurance contract. Bids must be solicited by advertisement in ~~such a~~ a manner ~~as~~ selected by the board that will provide reasonable notice to prospective bidders. In preparing bid proposals and evaluating bids, the board may utilize the services of consultants on a contract basis in order that the bids received ~~can~~ may be uniformly compared and properly evaluated. In determining which bid, if any, will best serve the interests of eligible employees and the state, the board shall give adequate consideration to the following factors:

1. The economy to be effected.
2. The ease of administration.
3. The adequacy of the coverages.
4. The financial position of the carrier, with special emphasis as to its solvency.
5. The reputation of the carrier and ~~such any~~ any other information ~~as that~~ is available tending to show past experience with the carrier in matters of claim settlement, underwriting, and services.

The board may reject any or all bids and, in the event it does so, shall again solicit bids as provided in this section. The board may establish a plan of self-insurance for providing health insurance benefits coverage only under an administrative services only (ASO) contract or a third party administrator (TPA) contract.

SECTION 2. AMENDMENT. Section 54-52.1-04.9 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52.1-04.9. Uniform group insurance program - Employee assistance program. The board ~~may~~ shall establish an employee assistance program available to persons in the medical and hospital benefits coverage group. The premium for this coverage must be paid as provided by section 54-52.1-06. The board shall receive bids for this program under section 54-52.1-04. Each department, board, or agency shall obtain employee assistance program services through the board for eligible employees and may not enter into any agreement to obtain employee assistance program services with a third-party provider except that a department, board, or agency may use its own employee assistance program services to the extent such services are provided by personnel of that department, board, or agency. As used in this section, "employee assistance program" means an employer-sponsored service for employees under which a professional employee assistance program staff assists employees and their families in finding help for emotional, drug, alcohol, family, health, and other personal or job-related problems that may be affecting their work performance.

SECTION 3. TRANSITION. To provide for a transitional employee assistance program, the public employees retirement system board may establish employee assistance program plans for participating employers who have not contracted for employee assistance program services and shall assume contractual authority for those participating state employers who have already contracted for employee assistance program services. All contracts entered into or extended during the transitional period are exempt from the requirements of sections 54-52.1-04 and 54-52.1-06.

SECTION 4. EFFECTIVE DATE - EXPIRATION DATE. Sections 1 and 2 of this Act become effective on July 1, 1999. Section 3 of this Act is effective through June 30, 1999, and after that date is ineffective.

SECTION 5. EMERGENCY. Section 3 of this Act is declared to be an emergency measure.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 468

SENATE BILL NO. 2100 (Senator C. Nelson)

DISTRICT HEALTH UNIT PARTICIPATION IN PRETAX BENEFITS PROGRAM

AN ACT to amend and reenact sections 54-52.3-01 and 54-52.3-03 of the North Dakota Century Code, relating to participation by district health units in the pretax benefits program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-52.3-01 of the North Dakota Century Code is amended and reenacted as follows:

54-52.3-01. Pretax benefits program for public employees. The public employees retirement system board may establish a pretax benefits program for all state employees and employees of district health units under which a state an employee may reduce the employee's salary and elect benefits to the extent of the reduction. ~~The board may permit political subdivisions to participate in the pretax benefits program.~~ Any A participating political subdivision district health unit shall comply with the program conditions and pay all fees established by the board.

SECTION 2. AMENDMENT. Section 54-52.3-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52.3-03. Employer savings used to defray expenses of administering program - Continuing appropriation. The office of management and budget shall transfer funds from the savings accruing to the agencies' salaries and wages line item, as a result of the diminution of the state's employer contribution for the Federal Insurance Contribution Act tax, to a payroll clearing account. The office of management and budget shall transfer funds from the payroll clearing account to the board as necessary to defray the reasonable expenses of administering the pretax benefits program established under this chapter, including expenses associated with the program's medical spending account. Any revenue collected by the board from participating ~~political subdivisions~~ district health units must be used, and is hereby appropriated, to defray the expenses of administering the program. The amount necessary to pay consultants retained by the board, any insurance costs associated with the medical spending account, and medical reimbursements for the medical spending account if funds are insufficient to pay claims are hereby appropriated from the savings and revenue generated by the program. All other expenses of administering the program must be paid in accordance with the agency's appropriation authority as established by the legislative assembly. The director of the office of management and budget may decrease or suspend the transfer of the savings accruing to the agencies' salaries and wages line item to the payroll clearing account upon determination that the funds deposited under this section are sufficient to offset anticipated obligations. Notwithstanding other provisions in this section, the public employees retirement system board, or any successor state agency, may not establish, enroll, or administer any pretax benefits program for a political subdivision or any other public or private business or entity, except for any program established

specifically for employees of the state and employees of district health units. ~~The board may continue administering any pretax benefits program established for a political subdivision before January 1, 1991, through the end of the plan year.~~

Approved March 19, 1997

Filed March 19, 1997

CHAPTER 469

SENATE BILL NO. 2084

(Appropriations Committee)

(At the request of the Office of Administrative Hearings)

ADMINISTRATIVE HEARINGS FUND

AN ACT to amend and reenact subsection 3 of section 54-57-07 of the North Dakota Century Code, relating to the administrative hearings fund of the office of administrative hearings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁸ **SECTION 1. AMENDMENT.** Subsection 3 of section 54-57-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. A special fund is established in the state treasury and designated as the administrative hearings fund. The ~~director~~ office of administrative hearings shall deposit in the fund all moneys received by ~~the office of administrative hearings~~ it in payment for providing ~~temporary services rendered by any administrative law judges to judge in the conduct of an administrative hearings hearing~~ and related proceedings under this chapter, as well as all moneys received by the office in payment for mileage, meals, and lodging in connection with providing any administrative law judge to conduct an administrative hearing and related proceedings. The moneys in the fund are a standing and continuing appropriation and are appropriated, as necessary, for the following purposes:
 - a. For the ~~director~~ office of administrative hearings to ~~contract with and make pay for salaries, wages, benefits, operating expenses, and equipment, including~~ payment to temporary administrative law judges, as necessary, for the purpose of providing requested administrative law judges to agencies, to any unit of local government in this state, to any tribal government in this state, or to the judicial branch.
 - b. For the ~~director~~ office of administrative hearings to pay mileage, meals, and lodging to any administrative law judges, as necessary, in connection with the services to be provided ~~by~~ under this chapter.

Approved March 20, 1997
 Filed March 20, 1997

²⁸ Section 54-57-07 was also amended by section 4 of Senate Bill No. 2018, chapter 47.

CHAPTER 470

SENATE BILL NO. 2399

(Senator W. Stenehjem)

(Representative Kretschmar)

(Approved by the Delayed Bills Committee)

TRIBAL-STATE GAMING COMPACT APPROVAL

AN ACT to provide approval of amendments and renewals of tribal-state gaming compacts and for an open records exception for tribal gaming financial information submitted to a state agency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Tribal-state gaming compact - Definition. A tribal-state gaming compact is a duly executed agreement between the state and a federally recognized Indian tribe as approved by the secretary of the department of interior of the United States pursuant to the Indian Gaming Regulatory Act of 1988 [Pub. L. 100-497; 102 Stat. 2467; 25 U.S.C. 2701 et seq.].

SECTION 2. Tribal gaming records not subject to disclosure - Exceptions. Except as provided in each tribal-state gaming compact, all tribal gaming records, including trade secret and proprietary information as defined in section 44-04-18.4, submitted to an agency of this state are confidential and are not public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

SECTION 3. Tribal-state gaming compact - Creation, renewals, and amendments. The governor or the governor's designee may represent the state in any gaming negotiation in which the state is required to participate pursuant to 25 U.S.C. 2701 et seq. by any federally recognized Indian tribe and, on behalf of the state, may execute a gaming compact between the state and a federally recognized Indian tribe, subject to the following:

1. If the legislative assembly is not in session at the time gaming negotiations are being conducted, the chairman and vice chairman of the legislative council or the designee of the chairman or vice chairman may attend all negotiations and brief the legislative council on the status of the negotiations.
2. If the legislative assembly is in session at the time negotiations are being conducted, the majority and minority leaders of both houses, or their designees, may attend all negotiations and brief their respective houses on the status of the negotiations.
3. The compact may authorize an Indian tribe to conduct gaming that is permitted in the state for any purpose by any person, organization, or entity.
4. For the purposes of this Act, the term "gaming that is permitted in the state for any purpose by any person, organization, or entity" includes any game of chance that any Indian tribe was permitted to conduct

under a tribal-state gaming compact that was in effect on the effective date of this Act.

5. The compact may not authorize gaming to be conducted by an Indian tribe at any off-reservation location not permitted under a tribal-state gaming compact in effect on the effective date of this Act, except that in the case of the tribal-state gaming compact between the Turtle Mountain Band of Chippewa and the state, gaming may be conducted on land within Rolette County held in trust for the Band by the United States government which was in trust as of the effective date of the Indian Gaming Regulatory Act of 1988 [Pub. L. 100-497, 102 Stat. 2467; 25 U.S.C. 2701 et seq.].
6. The compact may not obligate the state to appropriate state funds; provided, however, the state may perform services for reimbursement.
7. The negotiations between the tribe and the state must address the possibility of a mutual effort of the parties to address the issue of compulsive gambling.
8. If the legislative assembly is not in session when the negotiations are concluded, the governor shall forward a copy of the compact as finally negotiated to each member of the legislative council at least twenty-one days before the compact is signed.
9. If the legislative assembly is in session when the negotiations are concluded, the governor shall forward a copy of the compact as finally negotiated to each member of the legislative assembly at least twenty-one days before the compact is signed.
10. Before execution of any proposed tribal-state gaming compact or amendment thereto, the governor shall conduct one public hearing on the proposed compact or amendment.

Approved April 10, 1997
Filed April 10, 1997

STATE HISTORICAL SOCIETY AND STATE PARKS

CHAPTER 471

HOUSE BILL NO. 1057 (Legislative Council) (Government Organization Committee)

OUTDOOR RECREATION INTERAGENCY COUNCIL ELIMINATED

AN ACT to amend and reenact section 24-02-01.1 of the North Dakota Century Code, relating to the state outdoor recreation interagency council; and to repeal section 55-08-02.1 of the North Dakota Century Code, relating to the state outdoor recreation interagency council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-02-01.1 of the North Dakota Century Code is amended and reenacted as follows:

24-02-01.1. Department of transportation - Creation - Transfer of functions. ~~There~~ The department of transportation is ~~hereby~~ established as an executive department of this state ~~to be known as the department of transportation~~. ~~There are hereby transferred~~ Transferred to and vested in the department of transportation ~~all~~ are the functions, powers, and duties of the following governmental agencies:

1. The highway department, the highway commissioner, and the chief engineer, including titles 24 and 39, chapter 49-17.1, and sections 49-10.1-17, 49-17.2-27, and 55-01-01; ~~and 55-08-02.1~~.
2. The motor vehicle department and the registrar of motor vehicles, including title 39, chapter 57-40.3, and sections 26.1-23-03 and 26.1-41-02.

SECTION 2. REPEAL. Section 55-08-02.1 of the North Dakota Century Code is repealed.

Approved March 13, 1997
Filed March 13, 1997

TAXATION

CHAPTER 472

HOUSE BILL NO. 1107

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

ELECTRONIC TRANSFER TAX PAYMENTS

AN ACT to amend and reenact subdivision a of subsection 15 of section 57-01-02 of the North Dakota Century Code, relating to the use of electronic funds transfers for the payment of taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision a of subsection 15 of section 57-01-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. ~~May require, consistent with the cash management policies of the office of management and budget, that any taxpayer owing one hundred thousand dollars or more in connection with any return, report, or other document to be filed with the commissioner shall allow a taxpayer to elect to pay the tax liability to the state no later than the date the payment is required by law to be made in funds which are immediately available to the state on the date of payment. An election to pay the tax under this subdivision is binding until the taxpayer applies to the tax commissioner to rescind the election. Payment in immediately available funds may be made by wire transfer of funds through the federal reserve system or by any other means established by the commissioner which ensures the availability of the funds to the state on the date of payment. Evidence of the payment must be furnished to the commissioner on or before the due date of the tax as established by law. Failure to timely make the payment in immediately available funds or failure to provide evidence of payment in a timely manner subjects the taxpayer to penalty and interest as provided by law for delinquent or deficient tax payments. If payment is timely made in other than immediately available funds, penalty and interest must be added to the amount of tax due from the due date of the tax payment to the date that funds from the tax payment become available to the state.~~

Approved February 20, 1997
Filed February 21, 1997

CHAPTER 473

HOUSE BILL NO. 1105

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

DELINQUENT NONRESIDENT FUELS TAX COLLECTIONS

AN ACT to amend and reenact section 57-01-13 of the North Dakota Century Code, relating to the collection of delinquent motor vehicle fuels, special fuels, importer for use, aviation fuel, and motor vehicle excise taxes from nonresident taxpayers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-01-13 of the North Dakota Century Code is amended and reenacted as follows:

57-01-13. Collection of delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, income, and business and corporation privilege taxes.

1. Notwithstanding the secrecy and confidential information provisions in chapters 57-38 and 57-39.2, the tax commissioner may, for the purpose of collecting delinquent North Dakota sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, income, or business and corporation privilege taxes due from a taxpayer not residing or domiciled in this state, contract with any collection or credit agency, within or without the state, for the collection of ~~such~~ the delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, income, or business and corporation privilege taxes, including penalties and interest thereon. For purposes of this section, a delinquent tax is defined as a tax liability that is due and owing for a period longer than six months and for which the taxpayer has been given at least three notices in writing requesting payment, the first two notices must be sent by regular mail to the taxpayer at ~~his~~ the taxpayer's last known mailing address and the third notice must be sent by certified or registered mail to the taxpayer's last known mailing address. If the tax commissioner has assigned a delinquent tax liability pursuant to this section, subsequent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, income, or business and corporation privilege taxes that become due from the same taxpayer may be assigned immediately and without further notice to the taxpayer, so long as the originally assigned liability has not been fully collected.
2. a. Fees for services, reimbursement, or any other remuneration to ~~such~~ a collection or credit agency must be based on the amount of tax, penalty, and interest actually collected. Each contract entered into between the tax commissioner and the collection or credit agency ~~shall~~ must provide for the payment of fees for ~~such~~ the services, reimbursements, or other remunerations not in excess of

fifty percent of the amount of delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, income, or business and corporation privilege tax, including penalties and interest actually collected.

- b. All funds collected, less the fees for collection services, as provided in the contract, must be remitted to the tax commissioner monthly from the date of collection from a taxpayer. Forms to be used for ~~such~~ the remittances must be prescribed by the tax commissioner.
 - c. Before entering into ~~such~~ a contract, the tax commissioner shall require a bond from the collection or credit agency not in excess of ten thousand dollars, guaranteeing compliance with the terms of the contract.
3. A collection or credit agency entering into a contract with the tax commissioner for the collection of delinquent taxes pursuant to this section thereby agrees that it is doing business in this state for the purposes of the North Dakota income tax and business and corporation privilege tax laws.

Approved February 20, 1997
Filed February 21, 1997

CHAPTER 474**SENATE BILL NO. 2303**

(Senators St. Aubyn, Mutzenberger)
(Representatives R. Kelsch, Svedjan)

AGRICULTURAL PROPERTY DEFINITION

AN ACT to amend and reenact subsection 1 of section 57-02-01 of the North Dakota Century Code, relating to the definition of agricultural property for property tax assessment purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-02-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Agricultural property" means platted or unplatted lands used for raising agricultural crops or grazing farm animals, except lands platted and assessed as agricultural property prior to March 30, 1981, shall continue to be assessed as agricultural property until put to a use other than raising agricultural crops or grazing farm animals. The time limitations contained in this section may not be construed to prevent property that was assessed as other than agricultural property from being assessed as agricultural property if the property otherwise qualifies under this subsection. Property platted on or after March 30, 1981, is not agricultural property when any ~~three~~ four of the following conditions exist:
 - a. The land is platted by the owner.
 - b. Public improvements including sewer, water, or streets are in place.
 - c. Topsoil is removed or topography is disturbed to the extent that the property cannot be used to raise crops or graze farm animals.
 - d. Property is zoned other than agricultural.
 - e. Property has assumed an urban atmosphere because of adjacent residential or commercial development on three or more sides.
 - f. The parcel is less than ten acres [4.05 hectares] and not contiguous to agricultural property.
 - g. The property sells for more than four times the county average true and full agricultural value.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1996.

Approved March 6, 1997
Filed March 6, 1997

CHAPTER 475**HOUSE BILL NO. 1188**

(Representative Byerly)

FAIR ASSOCIATION PROPERTY TAX EXEMPTION

AN ACT to amend and reenact subsection 10 of section 57-02-08 of the North Dakota Century Code, relating to the property tax exemption for agricultural fair associations; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ **SECTION 1. AMENDMENT.** Subsection 10 of section 57-02-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10. Property of an agricultural fair association duly incorporated for the ~~exclusive~~ purpose of holding agricultural fairs, and not conducted for the profit of any of its members or stockholders; provided, that all property described in this subsection shall be subject to taxation for the cost of fire protection services furnished by any municipal corporation in which said property is located.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1996.

Approved March 25, 1997
Filed March 26, 1997

¹ Section 57-02-08 was also amended by section 1 of House Bill No. 1280, chapter 476, and section 1 of House Bill No. 1301, chapter 477.

CHAPTER 476

HOUSE BILL NO. 1280

(Representatives Aarsvold, Froseth, Grumbo, Olson)
(Senators Thane, Wogsland)

FARM BUILDING PROPERTY TAX EXEMPTION

AN ACT to amend and reenact subsection 15 of section 57-02-08 of the North Dakota Century Code, relating to the property tax exemption for farm residences and buildings; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

² **SECTION 1. AMENDMENT.** Subsection 15 of section 57-02-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15. a. All farm structures and improvements located on agricultural lands. This subsection shall be construed to exempt farm buildings and improvements only, and shall not be construed to exempt from taxation industrial plants, or structures of any kind not used or intended for use as a part of a farm plant, or as a farm residence. Any structure or improvement used in connection with a retail or wholesale business other than farming, any structure or improvement located on platted land within the corporate limits of a city, or any structure or improvement located on railroad operating property subject to assessment under chapter 57-05 is not exempt under this subsection.
- b. It is the intent of the legislative assembly that this exemption as applied to a residence shall be strictly construed and interpreted to exempt only a residence which is situated on a farm and which is occupied or used by a person who is a farmer and that the exemption shall not be applied to property which is occupied or used by a person who is not a farmer. For purposes of this subdivision:
 - (1) "Farm" means a single tract or contiguous tracts of agricultural land containing a minimum of ten acres [4.05 hectares] and for which normally provides a the farmer, who is actually farming the land or engaged in the raising of livestock or other similar operations normally associated with farming and ranching, with not less has not received more than fifty percent of his annual net income from nonfarm income, including that of a spouse if married, during each of the three preceding calendar years.

² Section 57-02-08 was also amended by section 1 of House Bill No. 1188, chapter 475, and section 1 of House Bill No. 1301, chapter 477.

- (2) "Farmer" means an individual who normally devotes the major portion of ~~his~~ time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state and ~~who normally receives not less~~ has not received more than fifty percent of his annual net income from ~~any one or more of the foregoing activities; and the term also~~ nonfarm income, including that of a spouse if married, during each of the three preceding calendar years. "Farmer" includes an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer as defined above the residence in which ~~he~~ the person lives and for which the exemption is claimed.
- (3) "Net income from farming activities" described in paragraph 2 means taxable income from those activities as computed for income tax purposes pursuant to chapter 57-38 adjusted to include the following:
- (a) The difference between gross sales price less expenses of sale and the amount reported for sales of agricultural products for which the farmer reported a capital gain.
 - (b) Interest expenses from farming activities which have been deducted in computing taxable income.
- (4) ~~For purposes of applying the income requirements of this subdivision, if a husband and wife reside together in a residence claimed as exempt under this subdivision because both or one of them is a farmer, not less than fifty percent of their combined net income from all sources must be net income from farming activities as defined in paragraph 3 in order for the residence to qualify for the exemption.~~
- ~~(5)~~ (5) When exemption is claimed under this subdivision for a residence, the assessor may require that the occupant of the residence who it is claimed is a farmer provide to the assessor for the year or years specified by the assessor a written statement in which it is stated that fifty percent or more of the net income of that occupant was, or was not, net income from farming activities; provided, that if that occupant is married and ~~they~~ both spouses occupy the residence, it shall be stated in the written statement ~~that whether~~ whether their net income from farming activities was, ~~or was not,~~ fifty percent or more of their combined net income from all sources.
- ~~(6)~~ (5) In addition to any of the provisions of this subsection or any other provision of law, a residence situated on agricultural land is not exempt for the year if it is occupied by an individual engaged in farming who had nonfarm income, including that of a spouse if married, of more than thirty thousand dollars during each of the three preceding calendar years. The provisions of this paragraph do not apply to an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer the

residence in which ~~he~~ the person lives and for which the exemption is claimed.

- ~~(7)~~ (6) For purposes of this section, "livestock" includes "nontraditional livestock" as defined in section 36-01-00.1.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1996.

Approved March 14, 1997
Filed March 14, 1997

CHAPTER 477

HOUSE BILL NO. 1301 (Representatives Lloyd, Aarsvold)

FARM BUILDING BED AND BREAKFAST EXEMPTION

AN ACT to amend and reenact subsection 15 of section 57-02-08 of the North Dakota Century Code, relating to the farm residence and buildings exemption for bed and breakfast facilities; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³ **SECTION 1. AMENDMENT.** Subsection 15 of section 57-02-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15. a. All farm structures and improvements located on agricultural lands. This subsection shall be construed to exempt farm buildings and improvements only, and shall not be construed to exempt from taxation industrial plants, or structures of any kind not used or intended for use as a part of a farm plant, or as a farm residence. Any structure or improvement used in connection with a retail or wholesale business other than farming, any structure or improvement located on platted land within the corporate limits of a city, or any structure or improvement located on railroad operating property subject to assessment under chapter 57-05 is not exempt under this subsection.
- b. It is the intent of the legislative assembly that this exemption as applied to a residence shall be strictly construed and interpreted to exempt only a residence which is situated on a farm and which is occupied or used by a person who is a farmer and that the exemption shall not be applied to property which is occupied or used by a person who is not a farmer. For purposes of this subdivision:
 - (1) "Farm" means a single tract or contiguous tracts of agricultural land containing a minimum of ten acres [4.05 hectares] and which normally provides a farmer, who is actually farming the land or engaged in the raising of livestock or other similar operations normally associated with farming and ranching, with not less than fifty percent of ~~his~~ the farmer's annual net income.
 - (2) "Farmer" means an individual who normally devotes the major portion of ~~his~~ the individual's time to the activities of producing products of the soil, poultry, livestock, or dairy

³ Section 57-02-08 was also amended by section 1 of House Bill No. 1280, chapter 476, and section 1 of House Bill No. 1188, chapter 475.

farming in such products' unmanufactured state and who normally receives not less than fifty percent of ~~his~~ the individual's annual net income from any one or more of the foregoing activities; and the term also includes an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer as defined above the residence in which ~~he~~ the individual lives and for which the exemption is claimed.

- (3) "Net income from farming activities" described in paragraph 2 means taxable income from those activities as computed for income tax purposes pursuant to chapter 57-38 adjusted to include the following:
 - (a) The difference between gross sales price less expenses of sale and the amount reported for sales of agricultural products for which the farmer reported a capital gain.
 - (b) Interest expenses from farming activities which have been deducted in computing taxable income.
- (4) For purposes of applying the income requirements of this subdivision, if a husband and wife reside together in a residence claimed as exempt under this subdivision because both or one of them is a farmer, not less than fifty percent of their combined net income from all sources must be net income from farming activities as defined in paragraph 3 in order for the residence to qualify for the exemption.
- (5) When exemption is claimed under this subdivision for a residence, the assessor may require that the occupant of the residence who it is claimed is a farmer provide to the assessor for the year or years specified by the assessor a written statement in which it is stated that fifty percent or more of the net income of that occupant was, or was not, net income from farming activities; provided, that if that occupant is married and they both occupy the residence, it shall be stated in the written statement that their net income from farming activities was, or was not, fifty percent or more of their combined net income from all sources.
- (6) In addition to any of the provisions of this subsection or any other provision of law, a residence situated on agricultural land is not exempt for the year if it is occupied by an individual engaged in farming who had nonfarm income, including that of a spouse if married, of more than ~~thirty~~ forty thousand dollars during each of the three preceding calendar years. The provisions of this paragraph do not apply to an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer the residence in which ~~he~~ the individual lives and for which the exemption is claimed.
- (7) For purposes of this section, "livestock" includes "nontraditional livestock" as defined in section 36-01-00.1.

- (8) A farmer operating a bed and breakfast facility in the farm residence occupied by that farmer is entitled to the exemption under this section for that residence if the farmer and the residence would qualify for exemption under this section except for the use of the residence as a bed and breakfast facility.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1996.

Approved April 8, 1997
Filed April 8, 1997

CHAPTER 478

SENATE BILL NO. 2191

(Senators Holmberg, W. Stenehjem, Traynor)

INCOME TAX LIEN FILING

AN ACT to amend and reenact subsection 3 of section 57-02-08.3, sections 57-38-49, 57-38-50, subsections 3, 4, 5, and 6 of section 57-39.2-13, subsections 3, 4, 5, and 6 of section 57-40.2-16, subsections 2, 3, and 4 of section 57-40.3-07.1, subsections 3, 4, and 6 of section 57-43.1-17.4, and subsections 3, 4, and 6 of section 57-43.2-16.3 of the North Dakota Century Code, relating to filing of tax liens; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁴ **SECTION 1. AMENDMENT.** Subsection 3 of section 57-02-08.3 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. a. Any credit allowed under subsection 1, plus interest in the amount of nine percent per year from the time the credit is taken, creates a lien in favor of the state against the property upon which the special assessment credit is allowed and remains a lien upon the property from the time the credit is allowed until the lien is fully satisfied by depositing the amount of the lien in the state general fund. If the amount of the lien exceeds the market value of the property, the state may accept the amount of the market value of the property as payment in full on the lien.
- b. (1) Except as otherwise provided in this subdivision, a transfer of title to the homestead because of sale, death, or otherwise may not be made without the lien being satisfied. When a credit under subsection 1 is allowed, the county auditor shall cause a notice of lien of record to be filed against subject property with the ~~secretary of state~~ register of deeds.
- (2) When a transfer occurs between spouses because of the death of one of them, the lien allowed by this section need not be satisfied until the property is again transferred.
- c. This lien has precedence over all other liens except general tax liens and prior special assessment liens and shall not be divested at any judicial sale. A mistake in the description of the property covered by this lien or in the name of the owner of the property does not defeat the lien if the property can be identified by the description in the special assessment list.

⁴ Section 57-02-08.3 was also amended by section 1 of Senate Bill No. 2070, chapter 479.

SECTION 2. AMENDMENT. Section 57-38-49 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-49. Preservation of lien. ~~In order to preserve the lien provided for in section 57-38-48 against subsequent mortgagees, purchasers, or Any mortgagee, purchaser, judgment creditors, for value and without notice of the lien, creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the commissioner shall file with filing in the central notice system maintained by the secretary of state a notice of the lien provided for in section 57-38-48, takes free of, or has priority over, the lien. The secretary of state commissioner shall enter index in the central indexing notice system the following data, under the names of taxpayers arranged alphabetically:~~

1. The name of the taxpayer.
2. The tax identification number or social security number of the taxpayer.
3. The name "State of North Dakota" as claimant.
3. 4. ~~Time~~ The date and time the notice of lien was received indexed.
4. ~~Date of notice.~~
5. ~~Amount~~ The amount of the lien then due.
6. ~~When satisfied.~~

~~The secretary of state shall endorse on each notice of lien the day, hour, and minute when received and shall preserve the same, and shall index the notice in the central indexing system. The notice of lien is effective as against subsequent creditors, purchasers, and encumbrances from the time of the indexing of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a register of deeds prior to July 1, 1996, may be refiled with the secretary of state indexed in the central notice system without changing its original priority as to property in the county where the lien was filed. The secretary of state commissioner shall accept index any notice of lien for filing when it is received with no payment of fees or costs to be made on behalf of the commissioner the secretary of state.~~

SECTION 3. AMENDMENT. Section 57-38-50 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-50. Satisfaction of lien. ~~Upon the payment of a the tax, together with any accrued penalties and interest attached, as to which the commissioner has filed a notice of lien with the secretary of state, the commissioner shall file with the secretary of state index a satisfaction of the tax and lien and the secretary of state shall enter the satisfaction on the notice on file and shall indicate that fact on in the central indexing notice system with no payment of without fees or costs to be made on behalf of the tax commissioner.~~

SECTION 4. AMENDMENT. Subsections 3, 4, 5, and 6 of section 57-39.2-13 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. ~~In order to preserve the lien against subsequent mortgagees, purchasers, or Any mortgagee, purchaser, judgment creditors, for value and without notice of the lien, creditor, or lien claimant acquiring any interest in, or~~

lien on, any property situated in the state, prior to the commissioner shall file with filing in the central notice system maintained by the secretary of state, a notice of the lien provided for in section 57-39.2-12, takes free of, or has priority over, the lien.

4. The ~~secretary of state~~ commissioner shall ~~enter~~ index in the central indexing notice system the following data; ~~under the names of taxpayers, arranged alphabetically:~~
 - a. The name of the taxpayer.
 - b. The tax identification number or social security number of the taxpayer.
 - c. The name "State of North Dakota" as claimant.
 - ~~e.~~ d. ~~Time~~ The date and time the notice of lien was ~~received~~ indexed.
 - ~~d.~~ Date of notice.
 - e. ~~Amount~~ The amount of the lien ~~then due.~~
 - f. ~~When satisfied.~~

~~The secretary of state shall endorse on each notice of lien the day, hour, and minute when received and preserve the same, and shall index the notice in the central indexing system and the~~ The notice of lien is effective from the time of indexing as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a register of deeds ~~before July 4, 1996,~~ may be ~~refiled with the secretary of state~~ indexed in the central notice system without changing its original priority as to property in the county where the lien was filed.

5. The commissioner is exempt from the payment of the filing fees as otherwise provided by law for the ~~filing~~ indexing of the notice of lien, or for its satisfaction.
6. Upon ~~the~~ payment of a the tax as to which the commissioner has ~~filed~~ indexed notice with the secretary of state in the central notice system, the commissioner shall ~~file with the secretary of state~~ index a satisfaction of the tax and the secretary of state shall ~~enter the satisfaction on the notice on file and indicate that fact~~ lien in the central indexing notice system.

SECTION 5. AMENDMENT. Subsections 3, 4, 5, and 6 of section 57-40.2-16 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. ~~In order to preserve the lien against subsequent mortgagees, purchasers, or~~ Any mortgagee, purchaser, judgment creditors, for value and without notice of the lien, creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the commissioner shall file with filing in the central notice system maintained by the secretary of state, a notice of the lien provided for in this section, takes free of, or has priority over, the lien.

4. The ~~secretary of state commissioner~~ shall ~~enter index~~ in the central ~~indexing notice~~ system the following data; ~~under the names of taxpayers, arranged alphabetically:~~
 - a. The name of the taxpayer.
 - b. The tax identification number or social security number of the taxpayer.
 - c. The name "State of North Dakota" as claimant.
 - e. ~~d.~~ Time The date and time the notice of lien was received indexed.
 - d. ~~Date of notice.~~
 - e. Amount The amount of the lien then due.
 - f. ~~When satisfied.~~

~~The secretary of state shall endorse on each notice of lien the day, hour, and minute when received and preserve the same, and shall index the notice in the central indexing system, and the~~ The notice of lien is effective from the time of indexing as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a register of deeds ~~before July 1, 1996,~~ may be ~~refiled with the secretary of state~~ indexed in the central notice system without changing its original priority as to property in the county where the lien was filed.

5. The commissioner is exempt from the payment of the recording and filing fees as otherwise provided by law for the ~~recording and filing indexing~~ of the notice of lien, or for its satisfaction.
6. Upon ~~the~~ payment of a the tax as to which the commissioner has filed indexed notice with the secretary of state in the central notice system, the commissioner shall ~~file with the secretary of state~~ index a satisfaction of the tax and the ~~secretary of state shall enter the satisfaction on the notice on file and indicate that fact~~ lien in the central ~~indexing notice~~ system.

SECTION 6. AMENDMENT. Subsections 2, 3, and 4 of section 57-40.3-07.1 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. ~~In order to preserve the lien against subsequent mortgagees, purchasers, or Any mortgagee, purchaser, judgment creditors, for value and without notice of the lien, creditor, or lien claimant acquiring any interest in, or lien on,~~ any property situated in the state, prior to the commissioner shall file with filing in the central notice system maintained by the secretary of state, a notice of the lien provided for in this section, takes free of, or has priority over, the lien.
3. The ~~secretary of state commissioner~~ shall ~~enter index~~ in the central ~~indexing notice~~ system the following data; ~~under the names of taxpayers, arranged alphabetically:~~
 - a. The name of the taxpayer.

- b. The tax identification number or social security number of the taxpayer.
- c. The name "State of North Dakota" as claimant.
- e. d. The date and time the notice of lien was received indexed.
- d. ~~The date of notice.~~
- e. ~~The amount of the lien then due.~~
- f. ~~When satisfied.~~

~~The secretary of state shall endorse on each notice of lien the day, hour, and minute received and preserve and index the notice in the central indexing system, and the~~ The notice of lien is effective from the time of the indexing as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a register of deeds before July 4, 1996, may be ~~refiled with the secretary of state~~ indexed in the central notice system without changing its original priority as to property in the county where the lien was filed. The commissioner is exempt from the payment of fees otherwise provided by law for the ~~filing~~ indexing or the satisfaction of the lien.

- 4. ~~Upon the payment of a the tax relative to which the commissioner has filed indexed notice with the secretary of state in the central notice system, the commissioner shall file with the secretary of state index a satisfaction of the tax, and the secretary of state shall enter the satisfaction on the notice on file and indicate that fact~~ lien in the central indexing notice system.

SECTION 7. AMENDMENT. Subsections 3, 4, and 6 of section 57-43.1-17.4 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- 3. ~~To preserve the lien against subsequent mortgagees, purchasers, or Any mortgagee, purchaser, judgment creditors, for value and without notice of the lien, creditor, or lien claimant acquiring any interest in, or lien on, any property situated in a county the state, prior to the commissioner shall file a notice of the lien with filing in the central notice system maintained by the secretary of state, a notice of the lien provided for in this section, takes free of, or has priority over, the lien.~~
- 4. ~~The secretary of state commissioner shall enter index in the central indexing notice system the following data; under the names of taxpayers, arranged alphabetically:~~
 - a. ~~The name of the taxpayer.~~
 - b. ~~The tax identification number or social security number of the taxpayer.~~
 - c. ~~The name "State of North Dakota" as claimant.~~
 - e. d. The date and time the notice of lien was received indexed.

- d. ~~The date of notice.~~
- e. The amount of the lien ~~then~~ due.
- f. ~~The date of satisfaction.~~

~~The secretary of state shall endorse on each notice of lien the day, hour, and minute when received and preserve the same, and shall index the notice in the central indexing system and the~~ The notice of lien is effective from the time of indexing as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a register of deeds before July 4, 1996, may be refiled with the secretary of state indexed in the central notice system without changing its original priority as to property in the county where the lien was filed.

- 6. Upon payment of a the tax as to which the commissioner has filed indexed notice ~~with the secretary of state in the central notice system,~~ the commissioner shall file ~~with the secretary of state~~ index a satisfaction of tax and the secretary of state shall enter ~~the satisfaction on the notice on file and indicate the fact on~~ the lien in the central indexing notice system.

SECTION 8. AMENDMENT. Subsections 3, 4, and 6 of section 57-43.2-16.3 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- 3. ~~To preserve the lien against subsequent mortgagees, purchasers, or~~ Any mortgagee, purchaser, judgment creditors, for value and without notice of the lien, creditor, or lien claimant acquiring any interest in, or lien on, any property situated in a ~~county~~ the state, prior to the commissioner shall file a notice of the lien with filing in the central notice system maintained by the secretary of state a notice of the lien provided for in this section, takes free of, or has priority over, the lien.
- 4. ~~The secretary of state commissioner shall enter~~ index in the central indexing notice system the following data; ~~under the names of taxpayers, arranged alphabetically:~~
 - a. The name of the taxpayer.
 - b. The tax identification number or social security number of the taxpayer.
 - c. The name "State of North Dakota" as claimant.
 - e. ~~d.~~ The date and time the notice of lien was received indexed.
 - d. ~~The date of notice.~~
 - e. The amount of the lien ~~then~~ due.
 - f. ~~The date of satisfaction.~~

~~The secretary of state shall endorse on each notice of lien the day, hour, and minute when received and preserve the same, and shall index the notice in the central indexing system and the~~ The notice of lien is effective from the time of indexing as of eight a.m. next following the

indexing of the notice. Any notice of lien filed by the commissioner with a register of deeds ~~before July 4, 1996,~~ may be ~~refiled with the secretary of state~~ indexed in the central notice system without changing its original priority as to property in the county where the lien was filed.

6. Upon payment of a the tax as to which the commissioner has ~~filed~~ indexed notice ~~with the secretary of state in the central notice system,~~ the commissioner shall ~~file with the secretary of state~~ index a satisfaction of tax and the secretary of state shall ~~enter the satisfaction on the notice on file and indicate the fact~~ the lien in the central indexing notice system.

SECTION 9. EFFECTIVE DATE. This Act is effective for tax liens filed after July 31, 1997.

Approved March 19, 1997

Filed March 19, 1997

CHAPTER 479

SENATE BILL NO. 2070

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

EQUALIZATION MEETING NOTICES

AN ACT to amend and reenact subdivision a of subsection 3 of section 57-02-08.3, subsection 2 of section 57-09-01, and subsection 2 of section 57-11-01 of the North Dakota Century Code, relating to when interest on a lien for homestead credit for special assessments begins to accrue and making the township clerk or city auditor responsible for publishing the notice of the annual meeting of the township board of equalization and of the annual meeting of the city board of equalization.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁵ **SECTION 1. AMENDMENT.** Subdivision a of subsection 3 of section 57-02-08.3 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. Any credit allowed under subsection 1, plus interest in the amount of nine percent per year from ~~the time the~~ June first of the year for which the special assessment installment for which a credit is taken becomes payable, ~~shall create~~ creates a lien in favor of the state against the property upon which the special assessment credit is allowed and remains a lien upon the property from the time the credit is allowed until the lien is fully satisfied by depositing the amount of the lien in the state general fund. If the amount of the lien exceeds the market value of the property, the state may accept the amount of the market value of the property as payment in full on the lien.

SECTION 2. AMENDMENT. Subsection 2 of section 57-09-01 of the North Dakota Century Code is amended and reenacted as follows:

2. Notwithstanding the provisions of subsection 1, if the same person performs the duties of assessor for two or more townships or cities, the ~~county director of tax equalization township clerk~~ may, after consultation with the assessor involved, designate the hour and day in the month of April at which the meeting provided for in subsection 1 must be held for each ~~such~~ township board of equalization; provided, that notice of the hour and day must be published in the official newspaper of the ~~county~~ political subdivisions involved and posted at the usual place of meeting by the township clerk at least ten days before ~~such~~ the meeting.

⁵ Section 57-02-08.3 was also amended by section 1 of Senate Bill No. 2191, chapter 478.

SECTION 3. AMENDMENT. Subsection 2 of section 57-11-01 of the North Dakota Century Code is amended and reenacted as follows:

2. Notwithstanding the provisions of subsection 1, if the same person performs the duties of assessor for two or more cities or townships, the ~~county director of tax equalization~~ city auditor may, after consultation with the assessor involved, designate the hour and day in the month of April at which the meeting provided for in subsection 1 must be held for each ~~such~~ city board of equalization; provided, that notice of the hour and day must be published in the official newspaper of the ~~county~~ political subdivisions involved and posted at the usual place of meeting by the city auditor at least ten days before ~~such~~ the meeting.

Approved April 2, 1997

Filed April 3, 1997

CHAPTER 480

HOUSE BILL NO. 1069

(Legislative Council)
 (Taxation Committee)
 (Representatives Belter, Keiser, Timm)
 (Senators Kringstad, Krauter, Kinnoin)

AGRICULTURAL PROPERTY ASSESSMENT FORMULA

AN ACT to amend and reenact section 57-02-27.2 of the North Dakota Century Code, relating to use of annual gross returns to determine agricultural property assessments; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁶ **SECTION 1. AMENDMENT.** Section 57-02-27.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-02-27.2. (Effective for first ~~three~~ taxable years year beginning after December 31, ~~1994~~ 1996) Valuation and assessment of agricultural lands. "True and full value" of agricultural lands must be their agricultural value for the purposes of sections 57-02-27, 57-02-27.1, 57-02-27.2, and 57-55-04. Agricultural value is defined as the "capitalized average annual gross return". The "annual gross return" must be determined from crop share rent, cash rent, or a combination thereof reduced by estimated property taxes and crop marketing expenses incurred by farmland owners renting their lands on a cash or crop share basis. For purposes of this section, "annual gross return" for cropland used for growing crops other than sugar beets and potatoes means thirty percent of annual gross income produced, "annual gross return" for cropland used for growing sugar beets and potatoes means twenty percent of annual gross income produced, and "annual gross return" for land used for grazing farm animals means twenty-five percent of an amount determined by the agricultural economics department of North Dakota state university to represent the annual gross income potential of the land based upon the animal unit carrying capacity of the land. The "average annual gross return" for each county must be determined as follows:

1. Total the annual gross returns for the most recent ~~six~~ seven years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the ~~six~~ seven.
2. Divide the figure arrived at in subsection 1 by ~~four~~ five.

To find the "capitalized average annual gross return" ~~for years after 1983~~, the average annual gross return must be capitalized by a rate ~~which~~ that is a ten-year average of the gross federal land bank mortgage rate of interest for North Dakota. The ten-year average must be computed from the twelve years ending with the most recent year used in subsection 1, discarding the highest and lowest years, and the

⁶ Section 57-02-27.2 was also amended by section 1 of House Bill No. 1070, chapter 481.

gross federal land bank mortgage rate of interest for each year must be determined in the manner provided in section 20.2032A-4(e)(1) of the United States treasury department regulations for valuing farm real property for federal estate tax purposes, except that the interest rate may not be adjusted as provided in paragraph (e)(2) of section 20.2032A-4.

~~It is the duty of the~~ The agricultural economics department of North Dakota state university ~~to shall~~ compute annually an estimate of the average agricultural value per acre [.40 hectare] of agricultural lands on a statewide and on a countywide basis, ~~to shall~~ compute the average agricultural value per acre [.40 hectare] for cropland and noncropland, which is agricultural land, for each county, and ~~to shall~~ provide the tax commissioner with this information by December first of each year. Fifty percent of the annual gross income from irrigated cropland must be considered additional expense of production and may not be included in computation of the average agricultural value per acre [.40 hectare] for cropland for the county as determined by the agricultural economics department. ~~Prior to~~ Before January first of each year, the tax commissioner shall provide to each county director of tax equalization these estimates of agricultural value for each county.

~~Prior to~~ Before February first of each year, the county director of tax equalization in each county shall provide to all assessors within the county an estimate of the average agricultural value of agricultural lands within each assessment district. ~~Such~~ The estimate must be based upon the average agricultural value for the county adjusted by the relative values of lands within each assessment district compared to the county average. In determining the relative value of lands for each assessment district compared to the county average, the county director of tax equalization ~~shall~~, wherever possible, shall use soil type and soil classification data from detailed and general soil surveys. Where such data cannot be used, the county director of tax equalization shall use whatever previous assessment data is best suited to the purpose.

~~It is the duty of each~~ Each local assessor ~~to shall~~ determine the relative value of each assessment parcel within ~~his~~ the assessor's jurisdiction and ~~to shall~~ determine the agricultural value of each assessment parcel by adjusting the agricultural value estimate for the assessment district by the relative value of the parcel. Each parcel must then be assessed according to ~~the provisions in~~ section 57-02-27. If either a local assessor or a township board of equalization develops an agricultural value for the lands in its assessment district differing substantially from the estimate provided by the county director of tax equalization, written evidence to support the change must be provided to the county director of tax equalization.

(Effective for taxable years beginning after December 31, 1997) Valuation and assessment of agricultural lands. "True and full value" of agricultural lands must be their agricultural value for the purposes of sections 57-02-27, 57-02-27.1, 57-02-27.2, and 57-55-04. Agricultural value is defined as the "capitalized average annual gross return". The "annual gross return" must be determined from crop share rent, cash rent, or a combination thereof reduced by estimated property taxes and crop marketing expenses incurred by farmland owners renting their lands on a cash or crop share basis. For purposes of this section, "annual gross return" for cropland used for growing crops other than sugar beets and potatoes means thirty percent of annual gross income produced, "annual gross return" for cropland used for growing sugar beets and potatoes means twenty percent of annual gross income produced, and "annual gross return" for land used for grazing farm animals means twenty-five percent of an amount determined by the agricultural economics department of North Dakota state university to represent the annual gross income potential of the land

based upon the animal unit carrying capacity of the land. The "average annual gross return" for each county must be determined as follows:

1. ~~Total~~ For taxable year 1998, total the annual gross returns for the most recent ~~six~~ eight years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the ~~six~~ eight. For taxable year 1999, total the annual gross returns for the nine years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the nine. For taxable year 2000 and thereafter, total the annual gross returns for the ten years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the ten.
2. ~~Divide~~ For taxable year 1998, divide the figure arrived at in subsection 1 by ~~four~~ six. For taxable year 1999, divide the figure arrived at in subsection 1 by seven. For taxable year 2000 and thereafter, divide the figure arrived at in subsection 1 by eight.

To find the "capitalized average annual gross return" ~~for years after 1983~~, the average annual gross return must be capitalized by a rate ~~which~~ that is a ten-year average of the gross federal land bank mortgage rate of interest for North Dakota. The ten-year average must be computed from the twelve years ending with the most recent year used in subsection 1, discarding the highest and lowest years, and the gross federal land bank mortgage rate of interest for each year must be determined in the manner provided in section 20.2032A-4(e)(1) of the United States treasury department regulations for valuing farm real property for federal estate tax purposes, except that the interest rate may not be adjusted as provided in paragraph (e)(2) of section 20.2032A-4.

~~It is the duty of the~~ The agricultural economics department of North Dakota state university ~~to~~ shall compute annually an estimate of the average agricultural value per acre [.40 hectare] of agricultural lands on a statewide and on a countywide basis, ~~to~~ shall compute the average agricultural value per acre [.40 hectare] for cropland and noncropland, which is agricultural land, for each county, and ~~to~~ shall provide the tax commissioner with this information by December first of each year. ~~Prior to~~ Before January first of each year, the tax commissioner shall provide to each county director of tax equalization these estimates of agricultural value for each county.

~~Prior to~~ Before February first of each year, the county director of tax equalization in each county shall provide to all assessors within the county an estimate of the average agricultural value of agricultural lands within each assessment district. ~~Such~~ The estimate must be based upon the average agricultural value for the county adjusted by the relative values of lands within each assessment district compared to the county average. In determining the relative value of lands for each assessment district compared to the county average, the county director of tax equalization ~~shall~~, wherever possible, shall use soil type and soil classification data from detailed and general soil surveys. Where such data cannot be used, the county director of tax equalization shall use whatever previous assessment data is best suited to the purpose.

~~It is the duty of each~~ Each local assessor ~~to~~ shall determine the relative value of each assessment parcel within ~~his~~ the assessor's jurisdiction and ~~to~~ shall determine the agricultural value of each assessment parcel by adjusting the agricultural value estimate for the assessment district by the relative value of the

parcel. Each parcel must then be assessed according to ~~the provisions in~~ section 57-02-27. If either a local assessor or a township board of equalization develops an agricultural value for the lands in its assessment district differing substantially from the estimate provided by the county director of tax equalization, written evidence to support the change must be provided to the county director of tax equalization.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1996.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 481

HOUSE BILL NO. 1070

(Legislative Council)

(Taxation Committee)

(Representatives Timm, Keiser, Gulleon)

(Senators Kringstad, Urlacher, Kinnoin)

IRRIGATED CROPLAND ASSESSED VALUATION

AN ACT to amend and reenact section 57-02-27.2 of the North Dakota Century Code, relating to assessed valuation of irrigated cropland; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁷ **SECTION 1. AMENDMENT.** Section 57-02-27.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-02-27.2. ~~(Effective for first three taxable years beginning after December 31, 1994)~~ Valuation and assessment of agricultural lands. "True and full value" of agricultural lands must be their agricultural value for the purposes of sections 57-02-27, 57-02-27.1, 57-02-27.2, and 57-55-04. Agricultural value is defined as the "capitalized average annual gross return". The "annual gross return" must be determined from crop share rent, cash rent, or a combination thereof reduced by estimated property taxes and crop marketing expenses incurred by farmland owners renting their lands on a cash or crop share basis. For purposes of this section, "annual gross return" for cropland used for growing crops other than sugar beets and potatoes means thirty percent of annual gross income produced, "annual gross return" for cropland used for growing sugar beets and potatoes means twenty percent of annual gross income produced, and "annual gross return" for land used for grazing farm animals means twenty-five percent of an amount determined by the agricultural economics department of North Dakota state university to represent the annual gross income potential of the land based upon the animal unit carrying capacity of the land. The "average annual gross return" for each county must be determined as follows:

1. Total the annual gross returns for the most recent six years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the six.
2. Divide the figure arrived at in subsection 1 by four.

To find the "capitalized average annual gross return" for years after 1983, the average annual gross return must be capitalized by a rate which is a ten-year average of the gross federal land bank mortgage rate of interest for North Dakota. The ten-year average must be computed from the twelve years ending with the most recent year used in subsection 1, discarding the highest and lowest years, and the

⁷ Section 57-02-27.2 was also amended by section 1 of House Bill No. 1069, chapter 480.

gross federal land bank mortgage rate of interest for each year must be determined in the manner provided in section 20.2032A-4(e)(1) of the United States treasury department regulations for valuing farm real property for federal estate tax purposes, except that the interest rate may not be adjusted as provided in paragraph (e)(2) of section 20.2032A-4.

~~It is the duty of the~~ The agricultural economics department of North Dakota state university ~~to shall~~ compute annually an estimate of the average agricultural value per acre [.40 hectare] of agricultural lands on a statewide and on a countywide basis, ~~to shall~~ compute the average agricultural value per acre [.40 hectare] for cropland and noncropland, which is agricultural land, for each county, and ~~to shall~~ provide the tax commissioner ~~with~~ this information by December first of each year. Fifty percent of the annual gross income from irrigated cropland must be considered additional expense of production and may not be included in computation of the average agricultural value per acre [.40 hectare] for cropland for the county as determined by the agricultural economics department. ~~Prior to~~ Before January first of each year, the tax commissioner shall provide to each county director of tax equalization these estimates of agricultural value for each county.

~~Prior to~~ Before February first of each year, the county director of tax equalization in each county shall provide to all assessors within the county an estimate of the average agricultural value of agricultural lands within each assessment district. ~~Such~~ The estimate must be based upon the average agricultural value for the county adjusted by the relative values of lands within each assessment district compared to the county average. In determining the relative value of lands for each assessment district compared to the county average, the county director of tax equalization shall use, wherever possible, ~~use~~ soil type and soil classification data from detailed and general soil surveys. Where such data cannot be used, the county director of tax equalization shall use whatever previous assessment data is best suited to the purpose.

~~It is the duty of each~~ Each local assessor ~~to shall~~ determine the relative value of each assessment parcel within ~~his~~ the assessor's jurisdiction and ~~to shall~~ determine the agricultural value of each assessment parcel by adjusting the agricultural value estimate for the assessment district by the relative value of the parcel. Each parcel must then be assessed according to the provisions in section 57-02-27. If either a local assessor or a township board of equalization develops an agricultural value for the lands in its assessment district differing substantially from the estimate provided by the county director of tax equalization, written evidence to support the change must be provided to the county director of tax equalization.

(Effective for taxable years beginning after December 31, 1997) Valuation and assessment of agricultural lands: "True and full value" of agricultural lands must be their agricultural value for the purposes of sections 57-02-27, 57-02-27.1, 57-02-27.2, and 57-55-04. Agricultural value is defined as the "capitalized average annual gross return". The "annual gross return" must be determined from crop share rent, cash rent, or a combination thereof reduced by estimated property taxes and crop marketing expenses incurred by farmland owners renting their lands on a cash or crop share basis. For purposes of this section, "annual gross return" for cropland used for growing crops other than sugar beets and potatoes means thirty percent of annual gross income produced; "annual gross return" for cropland used for growing sugar beets and potatoes means twenty percent of annual gross income produced; and "annual gross return" for land used for grazing farm animals means twenty-five percent of an amount determined by the agricultural economics department of North Dakota state university to represent the annual gross income potential of the land

based upon the animal unit carrying capacity of the land. The "average annual gross return" for each county must be determined as follows:

1. Total the annual gross returns for the most recent six years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the six.
2. Divide the figure arrived at in subsection 1 by four.

To find the "capitalized average annual gross return" for years after 1983, the average annual gross return must be capitalized by a rate which is a ten-year average of the gross federal land bank mortgage rate of interest for North Dakota. The ten-year average must be computed from the twelve years ending with the most recent year used in subsection 1, discarding the highest and lowest years, and the gross federal land bank mortgage rate of interest for each year must be determined in the manner provided in section 20.2032A-4(e)(1) of the United States treasury department regulations for valuing farm real property for federal estate tax purposes, except that the interest rate may not be adjusted as provided in paragraph (e)(2) of section 20.2032A-4.

It is the duty of the agricultural economics department of North Dakota state university to compute annually an estimate of the average agricultural value per acre [-40 hectare] of agricultural lands on a statewide and on a countywide basis; to compute the average agricultural value per acre [-40 hectare] for cropland and noncropland, which is agricultural land, for each county, and to provide the tax commissioner with this information by December first of each year. Prior to January first of each year, the tax commissioner shall provide to each county director of tax equalization these estimates of agricultural value for each county.

Prior to February first of each year, the county director of tax equalization in each county shall provide to all assessors within the county an estimate of the average agricultural value of agricultural lands within each assessment district. Such estimate must be based upon the average agricultural value for the county adjusted by the relative values of lands within each assessment district compared to the county average. In determining the relative value of lands for each assessment district compared to the county average, the county director of tax equalization shall, wherever possible, use soil type and soil classification data from detailed and general soil surveys. Where such data cannot be used, the county director of tax equalization shall use whatever previous assessment data is best suited to the purpose.

It is the duty of each local assessor to determine the relative value of each assessment parcel within his jurisdiction and to determine the agricultural value of each assessment parcel by adjusting the agricultural value estimate for the assessment district by the relative value of the parcel. Each parcel must then be assessed according to the provisions in section 57-02-27. If either a local assessor or a township board of equalization develops an agricultural value for the lands in its assessment district differing substantially from the estimate provided by the county director of tax equalization, written evidence to support the change must be provided to the county director of tax equalization.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1997.

Approved February 20, 1997
Filed February 21, 1997

CHAPTER 482**HOUSE BILL NO. 1298**

(Representative Kretschmar)

RAILROAD MILEAGE CERTIFICATION

AN ACT to amend and reenact section 57-05-04 of the North Dakota Century Code, relating to the certificate of mileage and valuation for purposes of taxation of a railroad.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-05-04 of the North Dakota Century Code is amended and reenacted as follows:

57-05-04. Certification of mileage and valuation. The state tax commissioner, at the time of certifying the equalized value of each organized county to the county auditor, shall certify the number of miles [kilometers] of each main line of railroad, and of the branch lines and sidetracks ~~thereof~~ of railroad within ~~said~~ the county, and the valuation per mile [1.61 kilometers] of ~~such~~ the line and branch lines, if any, as determined by the state board of equalization, and the county auditor of ~~such~~ the county shall apportion ~~such~~ the valuation to the cities, townships, and districts through which ~~such~~ the railroad and branch lines run according to the number of miles [kilometers] within the boundaries of each, as a part of the valuation of ~~such~~ the city, township, or district for the purposes of taxation; ~~and the same must be taxed as personal property is taxed in each county.~~

Approved March 6, 1997

Filed March 6, 1997

CHAPTER 483

HOUSE BILL NO. 1068

(Legislative Council)
(Taxation Committee)
(Representatives Keiser, Timm, Wilkie)
(Senator Kringstad)

TELECOMMUNICATIONS INDUSTRY TAXATION RESTRUCTURING

AN ACT to amend and reenact sections 57-06-01, 57-06-02, 57-06-05, 57-06-07, 57-06-14, 57-06-18, 57-34-01, 57-34-02, 57-34-03, 57-34-05, 57-34-06, 57-34-10, 57-34-11, and 57-34-12 of the North Dakota Century Code, relating to property tax exemptions and gross receipts taxes for telecommunications carriers and services; to repeal sections 57-06-01.1, 57-34-04, and 57-34-08 of the North Dakota Century Code, relating to assessment of property and gross receipts taxes for telecommunications carriers; to provide a continuing appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-06-01 of the North Dakota Century Code is amended and reenacted as follows:

57-06-01. Public utilities subject to provisions of chapter. ~~The provisions of this chapter govern~~ governs the assessment of the property of any public utility company defined in section 57-06-02, and of any other company used directly or indirectly in carrying or conveying persons, or property, ~~or messages,~~ unless the operative property is subject to a lieu tax in place of a general property tax. This chapter does not apply to the property of any railway or street railway company, ~~nor to the property of a company, the only business of which is providing signaling, paging, or other domestic public land mobile radio service if that service has seven hundred subscribers or less,~~ nor to the fixtures, buildings, and improvements owned by any cooperative or nonprofit corporation organized under the laws of this state and used by it to furnish potable water to its members and customers for uses other than irrigation of agricultural land, and except as otherwise provided in chapter 57-32, does not apply to the property of any express or air transportation company.

SECTION 2. AMENDMENT. Section 57-06-02 of the North Dakota Century Code is amended and reenacted as follows:

57-06-02. Definitions. As used in this chapter, unless the context and subject matter otherwise clearly require:

1. "Company" ~~means and~~ includes any individual, copartnership, business trust, corporation, limited liability company, joint-stock company, or association.
2. "Gas company" means a company owning, holding, or operating under lease or otherwise, any property in this state for the purpose of

furnishing gas, or distributing the same, for public use, by means of pipelines.

3. "Pipeline company" means a company owning, holding, or operating under a lease or otherwise, any property in this state for the purpose of transporting crude oil, natural gas, processed gas, manufactured gas, refined petroleum products, or coal and related products for public use.
4. "Power company" means a company owning or holding, under lease or otherwise, any property in this state, and operating the same, for the purpose of furnishing electric light, electric power, or steam heat, or distributing the same, for public use.
5. "Telecommunications company" means a company engaged in the furnishing of telecommunications service within this state.
6. "Telecommunications service" means the offering for hire of telecommunications facilities, or transmitting for hire telecommunications by means of such facilities whether by wire, radio, lightwave, or other means.
7. "Telegraph company" means a company owning or operating any telegraph or cable line in this state with appliances for the transmission of messages, and engaged in the business of furnishing telegraph service for compensation as owner, lessee, or otherwise.

SECTION 3. AMENDMENT. Section 57-06-05 of the North Dakota Century Code is amended and reenacted as follows:

57-06-05. Annual assessment. The state board of equalization, at its annual meeting in August, shall assess the franchises and all operative property of ~~telephone, telegraph,~~ power, gas, pipeline, and other companies, covered by this chapter, with reference to the value thereof on the first day of January of that year.

SECTION 4. AMENDMENT. Section 57-06-07 of the North Dakota Century Code is amended and reenacted as follows:

57-06-07. Additional information from ~~telephone, telegraph,~~ and power companies. Each ~~telephone, telegraph,~~ and power company shall report further as follows:

1. Number of miles [kilometers] of pole line in each taxing district in each county in the state, separated and classified as to location and character, as the tax commissioner may require; and
2. Cost of construction of such lines fully equipped, together with the present value per mile [1.61 kilometers] of such lines in each taxing district in each county.

SECTION 5. AMENDMENT. Section 57-06-14 of the North Dakota Century Code is amended and reenacted as follows:

57-06-14. Method of valuation. The operative property of each company assessed under this chapter must be assessed in the following manner:

1. For the purpose of determining the value of the property, the tax commissioner and the state board of equalization shall take into consideration the earning power of the property as shown by its gross earnings and net operating income, the market or actual value of its stocks and bonds, the value of its franchises, rights, and privileges granted under the laws of this state to do business in this state, and ~~such~~ any other legally established evidences of value as ~~enables~~ enable the board to make a just and equitable assessment.
2. In the case of a company ~~which~~ that owns or operates properties or lines partly within and partly without this state, the tax commissioner and state board of equalization shall value only the property within this state.
3. In determining the value of the portion within this state of an interconnected, or continuous system, the tax commissioner and state board of equalization may take into consideration the value of the entire system and of the part within this state, the mileage of the whole system and of the part within this state, the total operating earnings within and without this state, together with ~~such~~ any other information, facts, and circumstances as will enable ~~such~~ the officers to make a just and correct assessment.
4. Repealed by S.L. 1985, ch. 604, § 22.
5. ~~In the case of a telephone or telegraph company, the term "mileage" means miles [kilometers] of pole line or cable.~~
6. The board may take into consideration the reports, annual or otherwise, filed by any company required to be assessed under this chapter with the public service commission, and ~~also~~ shall take into consideration any valuation of such company by the public service commission.

SECTION 6. AMENDMENT. Section 57-06-18 of the North Dakota Century Code is amended and reenacted as follows:

57-06-18. Allocation of assessment of other operative property. All lots and parcels of real estate, not including rights of way, with the buildings, structures, and improvements thereon, ~~telephone exchange buildings,~~ dams and powerhouses, substations, shops, and other buildings, ~~telephone exchange systems,~~ electric power, electric light, gas, or steam distribution systems, and other personal property not a part of any single and continuous property, must be separately assessed and the assessment must be allocated to the taxing district in which ~~such~~ the property is located. The assessment by the state board of equalization covering ~~such~~ the property must give a legal description of the real estate and a general description of other property sufficient for identification. The assessment by ~~such~~ the board of ~~such~~ the operative property must cover the aggregate valuation of the property of any company in any municipality or taxing district of the state as a unit, and need not be made in detail.

SECTION 7. AMENDMENT. Section 57-34-01 of the North Dakota Century Code is amended and reenacted as follows:

57-34-01. Definitions. As used in this chapter, unless the context or subject matter otherwise clearly requires:

1. "Access revenues" means telephone company revenues resulting from charges to individuals, partnerships, corporations, and limited liability companies for their use of telephone company services or facilities to provide a toll service that permits origination or termination of telecommunications between a point or points within one telephone exchange and a point or points within another telephone exchange.
2. "Adjusted telephone operating gross receipts" means telephone operating telecommunications carrier gross receipts less all amounts paid by the reporting telephone company telecommunications carrier on telecommunications service that is taxable under this chapter in state and local sales and use taxes and federal excise taxes and amounts paid by the reporting telecommunications carrier to an individual, partnership, corporation, or limited liability company another telecommunications carrier for connecting fees, switching charges, access charges, and directory assistance.
3. "Originating revenues factor" means a fraction the numerator of which is the revenues of the telephone company from toll business generated from customer premises equipment in this state, regardless of the location to which the billing notice is sent, and the denominator of which is the total revenues of the telephone company from toll business everywhere.
4. "Property factor" means a fraction the numerator of which is the undepreciated original cost as of December thirty-first of the property located in this state owned or rented by the telephone company and used in operating its telecommunications business and the denominator of which is the undepreciated original cost as of December thirty-first of the property located everywhere owned or rented by the telephone company and used in operating its telecommunications business.
2. "Gross receipts" means all telecommunications carrier revenues from telecommunications service charges billed to any station in this state and from charges to another telecommunications carrier for directory assistance.
5. 3. "Station" means a subscriber line service address located in this state with a distinct call number designation or distinct extension number designation. If this is not a defined location, "station" means the location of the primary use of telecommunications equipment as determined by telephone number, authorization code, or billing address.
6. 4. "Telephone company" "Telecommunications carrier" means all mutual associations and cooperative organizations or cooperative corporations engaged in the business of furnishing communication by telephone, and shall further mean all other persons, firms, corporations, limited liability companies, or other organizations which are a person that is engaged in the business of furnishing means of communication by telephone telecommunications service within this state exclusively to rural areas or to rural areas and cities provided that each city served has a population of two thousand five hundred persons or less. The term includes a reseller of telecommunications service.
7. 5. "Telephone operating receipts" "Telecommunications service" means transmitting for consideration of two-way communication by wire, cable, fiber optics, radio, lightwave, microwave, satellite, or other means. The

term includes all revenue derived from local and rural exchange service, revenues from wide area telephone service, access revenues, billing and collection revenues, revenues from coin-operated telephones, revenues from directory advertising, revenues from directory assistance, recoveries within the year of all telecommunications revenues written off in prior years as uncollectible, all other operating revenues from telecommunications service as defined in subsection 14 of section 49-21-01 attributable to this state, and toll business gross revenues as defined in this section:

- a. Essential telecommunications service and nonessential telecommunications service as defined in section 49-21-01;
 - b. Telecommunications service that originates and terminates in this state;
 - c. Interstate telecommunications service that originates or terminates in this state and is billed to a station in this state;
 - d. A hospital, hotel, motel, or similar place of temporary accommodation selling telecommunications service to its patients or guests, if there is a separately stated charge for the service; and
 - e. Telegraph service.
6. "Telecommunications service charges" means the value of all consideration received by a telecommunications carrier for provision of telecommunications service and recovery within the year of telecommunications service charges written off in a prior year as uncollectible. For a telephone company telecommunications carrier operating on any form of mutual basis, "telephone operating receipts" the term includes all amounts assessed against the members for the operation and maintenance of the business. "Telephone operating receipts" The term does not include income revenue from merchandising, jobbing and contract work, charges for the maintenance or repair of customer premises equipment, including equipment leased or rented by the customer from any source, revenue from commercial and cable television, unless it is used for two-way communication, radio, one-way radio paging, the transmission of messages incidental to transient occupancy in hotels, income from nonutility operations not directly related to provision of telecommunications service, amounts charged for billing and collection on behalf of another telecommunications carrier, proceeds from transfer of capital stock, or revenues from the transfer, sale, or lease of property not devoted directly related to telecommunications operation. "Telephone operating receipts" does not include excise taxes on telephone service or facilities or uncollectible telephone operating revenues actually written off during the year.
8. "Toll business gross revenues" means gross revenues from toll business originating and terminating in this state and toll business gross revenues attributable to this state.
9. "Toll business gross revenues attributable to this state" means the telephone company's total gross revenues from interstate toll services everywhere multiplied by the amount obtained by dividing the sum of

the property factor and the originating revenues factor by two service. The term does not include amounts collected for or amounts collected from federal and state mechanisms to preserve and advance universal service.

SECTION 8. AMENDMENT. Section 57-34-02 of the North Dakota Century Code is amended and reenacted as follows:

57-34-02. Reports of telephone companies telecommunications carriers. Each ~~telephone company required~~ telecommunications carrier subject to be assessed gross receipts taxes under the provisions of this chapter shall annually make and file with the tax commissioner, on or before May first of each year, on such the form as the tax commissioner may prescribe, a report containing a statement of its telephone operating gross receipts in this state during the preceding calendar year, the number of stations in service on December thirty-first preceding, the number of miles [kilometers] of telephone line operated in providing telephone service, amounts paid by the carrier on telecommunications service that is taxable under this chapter during the preceding calendar year in state and local sales and use taxes and federal excise taxes, amounts received from or paid to another telecommunications carrier for directory assistance, and such any other information as the tax commissioner may require except that any telephone company having thirty telephone stations or less in service on December thirty-first preceding may not be required to furnish a statement of its telephone operating receipts. Each report must contain a statement of the number of stations located in each county served and each school district within such counties and the number of stations maintained per mile [1.64 kilometers] of telephone line in this state. Each report must be signed, subject to the provisions of section 12.1-11-02, by the president, secretary, or other official of the telephone company telecommunications carrier. Each telephone company subject to the provisions of this chapter, at the time of submitting its report to the tax commissioner, shall forward a copy of such report to the county auditor of each county in which it maintains a station or stations.

SECTION 9. AMENDMENT. Section 57-34-03 of the North Dakota Century Code is amended and reenacted as follows:

57-34-03. Computation of taxes by tax commissioner - Exemption for high-volume customers - Continuing appropriation.

1. On or before ~~August first~~ July fifteenth of each year, the tax commissioner shall review the report under section 57-34-02 and compute the tentative total tax to be assessed against each telephone company telecommunications carrier in this state in the following manner:
 - a. Telephone companies maintaining an average of one and twenty-five hundredths telephone stations or less per mile [1.64 kilometers] of telephone line operated in this state must be taxed at the rate of one-half of one percent of their adjusted telephone operating receipts.
 - b. Telephone companies maintaining an average of not less than one and twenty-six hundredths and not more than one and seventy-five hundredths telephone stations per mile [1.64 kilometers] of telephone line operated in this state must be taxed at the rate of one percent of their adjusted telephone operating receipts.

- e. Telephone companies maintaining an average of not less than one and seventy-six hundredths and not more than two and twenty-five hundredths telephone stations per mile [1.61 kilometers] of telephone line operated in this state must be taxed at the rate of one and one-half of one percent of their adjusted telephone operating receipts.
 - d. Telephone companies maintaining an average of more than two and twenty-five hundredths telephone stations per mile [1.61 kilometers] of telephone line operated in this state must be taxed at the rate of two percent of their adjusted telephone operating receipts.
2. If the tax due from any telephone company as computed under subsection 4 is less than fifty cents per station maintained in this state or if such company had less than thirty-one stations in service in this state on the preceding December thirty-first, such company is subject to a tax of fifty cents per station.
 3. Notwithstanding the provisions of subsections 4 and 2, any telephone company having twenty telephone stations or less in service on December thirty-first preceding the year for which the tax computed under this section is assessed is exempt from the provisions of this chapter at a rate of two and one-half percent of adjusted gross receipts. The tax commissioner shall give ten days' notice by mail to each telecommunications carrier of its tentative total tax under this section and of its right to contest the determination before the state board of equalization at its August meeting. The state board of equalization shall assess the tax under this section after consideration of any contest presented.
 2. A telecommunications carrier's customer in this state is entitled to a refund equal to two and one-half percent of the amount of telecommunications service charges paid to telecommunications carriers by that customer in excess of eight hundred thousand dollars in a calendar year. A refund claim under this subsection must be filed with the tax commissioner before July first of the year following the calendar year for which the refund is claimed. A claim for refund must be made in the manner prescribed by the tax commissioner. Refunds under this subsection must be paid by the tax commissioner from tax collections under this chapter and are appropriated as a standing and continuing appropriation to the tax commissioner for that purpose.

SECTION 10. AMENDMENT. Section 57-34-05 of the North Dakota Century Code is amended and reenacted as follows:

57-34-05. Certification of tax - Allocation to counties - Continuing appropriation. The tax commissioner shall certify to the county auditor of each county in which the company assessed maintains a telephone station or stations, the gross receipts of the company, the number of telephone stations within the county and the number within each school district of the county belonging to the said company and the amount of tax to be collected from said company.

The tax commissioner shall allocate the tax to be collected from each telephone company, as determined by the state board of equalization, to the counties upon a pro rata basis to be determined according to the proportion that each

company's stations in a county bears to the total number of stations maintained by such company net gross receipts tax revenues among counties in the same proportion that taxes paid by telecommunications carriers in locally assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by taxing districts in the county bears to all taxes paid by telecommunications carriers in locally assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by taxing districts in the state. Gross receipts tax revenues of eight million four hundred thousand dollars per taxable year are appropriated as a standing and continuing appropriation to the tax commissioner for allocation to counties under this section and any gross receipts tax revenues exceeding that appropriation in any taxable year must be deposited in the state general fund. If gross receipts tax revenues available for allocation in a taxable year are less than eight million four hundred thousand dollars, there is appropriated as a standing and continuing appropriation from the state general fund the amount that, when added to gross receipts tax revenues available for allocation for the taxable year, results in allocation of eight million four hundred thousand dollars to counties per taxable year.

SECTION 11. AMENDMENT. Section 57-34-06 of the North Dakota Century Code is amended and reenacted as follows:

57-34-06. Duties of county auditor treasurer. It is the duty of the county auditor after receiving such statement from the tax commissioner to certify such taxes to the county treasurer for collection at the time that real and personal property taxes are required to be certified. Such certification must give the amount allocated to each school district in which the company maintains a station or stations. The county auditor treasurer shall make such allocation and pay such funds allocate taxes received under this chapter to the state, the county, and the various school taxing districts upon a pro rata basis within the county according to the proportion that each company's stations in a school district bears to the total number of stations of such company in the county taxes paid by telecommunications carriers in locally assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by the state, the county, and each taxing district in the county bears to all taxes paid by telecommunications carriers in locally assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by the state, the county, and all taxing districts in the county.

SECTION 12. AMENDMENT. Section 57-34-10 of the North Dakota Century Code is amended and reenacted as follows:

57-34-10. ~~Penalty for failure to furnish statement~~ Penalties - Lien for tax.

1. ~~In case any company~~ If a telecommunications carrier refuses or neglects to make the reports required by this chapter, or refuses or neglects to furnish any information requested, the tax commissioner shall ~~inform himself as best he may on~~ use the best available facts necessary to be known in order to discharge his duties with respect to the ~~and estimates to determine taxation of the property gross receipts of such company, and the~~ that carrier. The tax must be imposed upon the basis of such that information, and the state board of equalization shall add a penalty of one-quarter of the tax due for failure to make the required report; which must be collected as a part of the tax.
2. Taxes levied under this chapter are due and payable to the tax commissioner on January first following the year in which the taxes were assessed. The unpaid principal balance of taxes on the following March

first is subject to a penalty of three percent, on the following May first an additional penalty of three percent, on the following July first an additional penalty of three percent, and on the following October fifteenth an additional penalty of three percent. Beginning January first of the year following the year the taxes became due, simple interest at the rate of twelve percent per annum applies to the unpaid principal balance until the taxes and penalties are paid. Interest penalties must be prorated to the nearest full month for a fractional year of delinquency.

3. Taxes under this chapter constitute a first and paramount lien in favor of the state upon all property and rights to property of the taxpayer. The lien may be foreclosed in the same manner provided by law for mortgages on real or personal property.

SECTION 13. AMENDMENT. Section 57-34-11 of the North Dakota Century Code is amended and reenacted as follows:

57-34-11. ~~Exemption from other taxation~~ Taxes in lieu of property taxes. The taxes imposed by this chapter are taxes upon the privilege of doing business in this state and are in lieu of all real and personal property taxes levied by the state or any of its political subdivisions upon real or personal property to the extent the property is directly used by any telephone company subject to the provisions of this chapter the telecommunications carrier in its telephone telecommunications operations and in lieu of real and personal property taxes on property leased or rented to any other person or company when the revenue derived from such leases or rentals is included in the telephone operating receipts of the company deriving the revenue. Real and personal property directly used by a telephone company subject to the provisions of this chapter and owned by any other person or company may not be assessed or taxed under the provisions of this chapter; provided, that any such property held under a contract for the purchase thereof by any telephone company subject to the provisions of this chapter must be considered for all purposes of taxation as property owned by that telephone company.

SECTION 14. AMENDMENT. Section 57-34-12 of the North Dakota Century Code is amended and reenacted as follows:

57-34-12. Rules and regulations - Appeals.

1. The state tax commissioner may ~~promulgate~~ adopt any rules and regulations that are necessary to carry out the provisions of this chapter. ~~The provisions of chapter 28-32 govern the promulgation of all rules and regulations, the holding of hearings thereon, and the appeal therefrom. All such appeals must be taken to the district court of Burleigh County.~~
2. Any person aggrieved by a decision of the state board of equalization may appeal to the district court of Burleigh County after the hearing ~~provided for in section 57-34-04.~~ The tax commissioner shall adopt rules as necessary to avoid double taxation of gross receipts and to eliminate the avoidance of taxation of gross receipts of telecommunications carriers under this chapter.

SECTION 15. REPEAL. Sections 57-06-01.1, 57-34-04, and 57-34-08 of the North Dakota Century Code are repealed.

SECTION 16. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1997.

Approved April 8, 1997

Filed April 8, 1997

CHAPTER 484**SENATE BILL NO. 2339**

(Senators Lips, Tallackson)
(Representatives Kerzman, Skarphol)

**CARBON DIOXIDE PIPELINE PROPERTY TAX
EXEMPTION**

AN ACT to amend and reenact section 57-06-17.1 of the North Dakota Century Code, relating to the property tax exemption for carbon dioxide pipelines.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-06-17.1 of the North Dakota Century Code is amended and reenacted as follows:

57-06-17.1. Carbon dioxide pipeline exemption. Property, not including land, is exempt from taxation during construction and for the first ten full taxable years after commencement of construction following initial operation if it consists of a pipeline, constructed after 1996 and necessary associated equipment for the transportation or storage of carbon dioxide ~~to an oilfield in this state~~ for use in enhanced recovery of oil or natural gas.

Approved April 2, 1997

Filed April 3, 1997

CHAPTER 485

HOUSE BILL NO. 1288

(Representatives Devlin, Glassheim, Jacobs, Mickelson)
(Senators Grindberg, Urlacher)

PROPERTY REASSESSMENTS

AN ACT to amend and reenact section 57-14-08 of the North Dakota Century Code, relating to property reassessments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-14-08 of the North Dakota Century Code is amended and reenacted as follows:

57-14-08. General reassessment of property - Allowance. A reassessment may be made as follows:

1. Upon the filing of a petition signed by not less than ten freeholders in ~~any~~ a political subdivision, or by the governing body of ~~any such that~~ such the subdivision, requesting a reassessment of property in ~~such the~~ such the subdivision or upon investigation by the board of county commissioners, the board of county commissioners, ~~in its discretion,~~ before October first, may order a reassessment of any class of property, or of all property, located within ~~such the~~ such the subdivision or within any subdivision if, in its opinion, taxable property located within ~~such the~~ such the subdivision has escaped assessment in whole or in part, or has been assessed unfairly, or has not been assessed according to law.
2. The board of county commissioners then may appoint ~~some~~ a competent citizen of this state as a special assessor who shall make a reassessment of the property specified by the board, and who shall proceed in accordance with the provisions of law governing assessors. The special assessor may be selected by competitive bidding or a process determined by the board of county commissioners. ~~Such~~ The special assessor must be allowed is entitled to reasonable compensation; ~~not to exceed eighty dollars per day,~~ by the board of county commissioners for ~~his~~ the special assessor's services, together with meals and lodging as allowed by law, and mileage expense at the rate allowed by law for each mile [1.61 kilometers] actually and necessarily traveled in the performance of ~~his~~ that person's duties, which must be audited and allowed by the board of county commissioners and paid out of the county treasury upon warrant of the county auditor. If the reassessment was ordered by the tax commissioner, ~~such the~~ such the commissioner shall appoint ~~some~~ a competent citizen of this state as a special assessor who shall make a reassessment of the property specified by the commissioner and who shall proceed in accordance with the provisions of the law governing assessors; ~~such the~~ such the special assessor ~~must be allowed is entitled to~~ to reasonable compensation by the commissioner for ~~his~~ that person's services; ~~not to exceed eighty dollars per day,~~ together with plus meals, lodging, and mileage expense at the rates provided by law, and the commissioner shall audit and allow the bill, and the same must be paid out of the county treasury. In either case, ~~such the~~ such the compensation must

be charged to the political subdivision in which ~~such the~~ reassessment was made and must be deducted by the county treasurer from funds coming into ~~his the~~ treasurer's hands apportionable to ~~such the~~ subdivision. The board of county commissioners or tax commissioner who appoints a special assessor may authorize such assistants as may be necessary to aid the special assessor and shall allow reasonable compensation; ~~not to exceed eighty dollars per day,~~ for each of ~~such the~~ assistants ~~together with~~ plus meals, lodging, and mileage expense at the rates provided by law, which amounts must be audited, allowed, and paid and must be charged to the political subdivision reassessed in the manner provided for the special assessor.

3. Upon completion of the reassessment, the assessor shall certify the ~~same~~ result to the county auditor, who forthwith shall give notice by mail to the state tax commissioner and the board of county commissioners and the governing boards of each township, city, and school district which is wholly or ~~partly in~~ partially within the reassessment district, that a reassessment has been completed in the named assessment district and that a meeting for the purpose of equalizing the assessment will be held in the county courthouse on the day and at the time specified in the notice. Each ~~such~~ board shall appoint one of its members to attend the equalization meeting and the tax commissioner shall attend or appoint a representative from ~~his the~~ commissioner's office to attend the meeting. ~~Such~~ The group of persons ~~shall~~ comprise the special board of equalization for the reassessment. The member representing the board of county commissioners ~~shall serve~~ serves as chairman and the county auditor ~~shall serve~~ serves as secretary for ~~such the~~ special board of equalization. ~~Such~~ The meeting must be held not later than thirty days from the date of the written notice of the meeting mailed by the county auditor. A notice of ~~such the~~ special meeting and ~~the its~~ purpose thereof must be published at least once in the official newspaper of the county in which the reassessment was made not less than one week prior to ~~such the~~ meeting. Each person, except the tax commissioner or ~~his the~~ commissioner's appointee, serving on this special board of equalization is entitled to compensation at the rate of ~~ten~~ up to forty-five dollars ~~a~~ per day plus mileage expense and necessary expenses for meals and lodging at the rate allowed by law for attendance at ~~such the~~ meeting. Claims therefor must be audited and allowed by the board of county commissioners and must be paid, charged, and deducted in the same manner as the claim of the special assessor. The claims for mileage expense and necessary expenses for meals and lodging of the tax commissioner or ~~his the~~ commissioner's appointee in attending the special equalization meeting must be audited, allowed, and paid as are other similar claims made by them.
4. At ~~such the~~ meeting, the special board of equalization shall hear all grievances and complaints in regard to ~~such the~~ reassessment and shall proceed to equalize the same. All tax lists ~~thereupon~~ must be corrected to comply with ~~such the~~ action.

Approved March 13, 1997
Filed March 13, 1997

CHAPTER 486

HOUSE BILL NO. 1341

(Representatives Nichols, Wardner, Brown)
(Senator Kinnoin)

EXEMPT PROPERTY VALUATION LIMITATION

AN ACT to amend and reenact section 57-15-01.1 of the North Dakota Century Code, relating to establishing values for property exempt from property taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁸ **SECTION 1. AMENDMENT.** Section 57-15-01.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-15-01.1. (Effective for first four taxable years beginning after December 31, 1994) Protection of taxpayers and taxing districts. Each taxing district may levy the lesser of the amount in dollars as certified in the budget of the governing body, or the amount in dollars as allowed in this section, subject to the following:

1. No taxing district may levy more taxes expressed in dollars than the amounts allowed by this section.
2. For purposes of this section:
 - a. "Base year" means the taxing district's taxable year with the highest amount levied in dollars in property taxes of the three taxable years immediately preceding the budget year; and
 - b. "Budget year" means the taxing district's year for which the levy is being determined under this section.
3. A taxing district may elect to levy two percent more in taxable year 1995 and two percent more in taxable year 1996 than the amount levied in dollars in the base year and for taxable years 1997 and 1998 may elect to levy the amount levied in dollars in the base year. Any levy under this section must be specifically approved by a resolution approved by the governing body of the taxing district. Before determining the levy limitation under this section, the dollar amount levied in the base year must be:
 - a. Reduced by an amount equal to the sum determined by application of the base year's mill rate for that taxing district to the final base year taxable valuation of any property that is not included in the assessment for the budget year but was included in the assessment for the base year. However, no reduction may be made under this

⁸ Section 57-15-01.1 was also amended by section 3 of House Bill No. 1018, chapter 18.

- section due to the exemption of the personal property of railroads by enactment of House Bill No. 1396 by the fifty-fourth legislative assembly.
- b. Increased by an amount equal to the sum determined by the application of the base year's mill rate for that taxing district to the final budget year taxable valuation of any property that was not included in the assessment for the base year but which is included in the assessment for the budget year.
 - c. Reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district.
4. A taxing district may levy an amount in dollars equal to the amount levied in any of the previous three years reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district and increased by an amount equal to the sum determined by the application of any unused mill levy authority from that year, which was authorized by law or by the electors of that taxing district but not levied for that year, to the budget year taxable valuation of the taxable property in that taxing district. A taxing district electing to increase its levy under this subsection may not add any amount permitted by subsection 3 to the amount levied under this subsection.
 5. In addition to any other levy limitation factor under this section, a taxing district may increase its levy in dollars to reflect new or increased mill levies authorized by the legislative assembly or authorized by the electors of the taxing district.
 6. Under this section a taxing district may supersede any applicable mill levy limitations otherwise provided by law, or a taxing district may levy up to the mill levy limitations otherwise provided by law without reference to this section, but the provisions of this section do not apply to the following:
 - a. Any irrevocable tax to pay bonded indebtedness levied pursuant to section 16 of article X of the Constitution of North Dakota.
 - b. The one-mill levy for the state medical center authorized by section 10 of article X of the Constitution of North Dakota.
 7. A school district choosing to determine its levy authority under this section may apply subsection 3 only to the amount in dollars levied for general fund purposes under section 57-15-14 or, if the levy in the base year included separate general fund and special fund levies under sections 57-15-14 and 57-15-14.2, the school district may apply subsection 3 to the total amount levied in dollars in the base year for both the general fund and special fund accounts. School district levies under any section other than section 57-15-14 may be made within applicable limitations but those levies are not subject to subsection 3.
 8. Optional levies under this section may be used by any city or county that has adopted a home rule charter unless the provisions of the charter supersede state laws related to property tax levy limitations.

(Effective for taxable years beginning after December 31, 1998) Protection of taxpayers and taxing districts. Each taxing district may levy the lesser of the amount in dollars as certified in the budget of the governing body, or the amount in dollars as allowed in this section, subject to the following:

1. No taxing district may levy more taxes expressed in dollars than the amounts allowed by this section.
2. For purposes of this section:
 - a. "Base year" means the taxing district's taxable year with the highest amount levied in dollars in property taxes of the three taxable years immediately preceding the budget year;
 - b. "Budget year" means the taxing district's year for which the levy is being determined under this section; ~~and~~
 - c. "Calculated mill rate" means the mill rate that results from dividing the base year taxes levied by the sum of the taxable value of the taxable property in the base year plus the taxable value of the ~~exempt~~ property exempt by local discretion or charitable status, calculated in the same manner as the taxable property; and
 - d. "Property exempt by local discretion or charitable status" means property exempted from taxation as new or expanding businesses under chapter 40-57.1; improvements to property under chapter 57-02.2; or buildings belonging to institutions of public charity, new single-family residential or townhouse or condominium property, property used for early childhood services, or pollution abatement improvements under section 57-02-08.
3. A taxing district may elect to levy the amount levied in dollars in the base year. Any levy under this section must be specifically approved by a resolution approved by the governing body of the taxing district. Before determining the levy limitation under this section, the dollar amount levied in the base year must be:
 - a. Reduced by an amount equal to the sum determined by application of the base year's calculated mill rate for that taxing district to the final base year taxable valuation of any taxable property and ~~exempt~~ property that exempt by local discretion or charitable status which is not included in the taxing district for the budget year but was included in the taxing district for the base year.
 - b. Increased by an amount equal to the sum determined by the application of the base year's calculated mill rate for that taxing district to the final budget year taxable valuation of any taxable property or ~~exempt~~ property that exempt by local discretion or charitable status which was not included in the taxing district for the base year but which is included in the taxing district for the budget year.
 - c. Reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district.

4. A taxing district may levy an amount in dollars equal to the amount levied in any of the previous three years reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district and increased by an amount equal to the sum determined by the application of any unused mill levy authority from that year, which was authorized by law or by the electors of that taxing district but not levied for that year, to the budget year taxable valuation of the taxable property in that taxing district. A taxing district electing to increase its levy under this subsection may not add any amount permitted by subsection 3 to the amount levied under this subsection.
5. In addition to any other levy limitation factor under this section, a taxing district may increase its levy in dollars to reflect new or increased mill levies authorized by the legislative assembly or authorized by the electors of the taxing district.
6. Under this section a taxing district may supersede any applicable mill levy limitations otherwise provided by law, or a taxing district may levy up to the mill levy limitations otherwise provided by law without reference to this section, but the provisions of this section do not apply to the following:
 - a. Any irrevocable tax to pay bonded indebtedness levied pursuant to section 16 of article X of the Constitution of North Dakota.
 - b. The one-mill levy for the state medical center authorized by section 10 of article X of the Constitution of North Dakota.
7. A school district choosing to determine its levy authority under this section may apply subsection 3 only to the amount in dollars levied for general fund purposes under section 57-15-14 or, if the levy in the base year included separate general fund and special fund levies under sections 57-15-14 and 57-15-14.2, the school district may apply subsection 3 to the total amount levied in dollars in the base year for both the general fund and special fund accounts. School district levies under any section other than section 57-15-14 may be made within applicable limitations but those levies are not subject to subsection 3.
8. Optional levies under this section may be used by any city or county that has adopted a home rule charter unless the provisions of the charter supersede state laws related to property tax levy limitations.

Approved March 14, 1997
Filed March 14, 1997

CHAPTER 487**SENATE BILL NO. 2141**
(Senators Freborg, Tomac)
(Representatives Carlisle, Delzer)**RURAL FIRE PROTECTION DISTRICT MILL LEVY**

AN ACT to amend and reenact section 57-15-26.3 of the North Dakota Century Code, relating to the mill levy limitation for rural fire protection districts; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-15-26.3 of the North Dakota Century Code is amended and reenacted as follows:

57-15-26.3. General tax levy of fire protection districts. A rural fire protection district may levy a tax in accordance with chapter 18-10 not exceeding five mills on the taxable valuation of property in the district except upon resolution adopted by the board of directors after receipt of a petition by not less than twenty percent of the qualified electors residing within the district, the levy may be made in an amount not exceeding ~~ten~~ thirteen mills.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1996.

Approved March 21, 1997
Filed March 21, 1997

CHAPTER 488**SENATE BILL NO. 2195**

(Senators Krebsbach, Lindaas)
(Representatives Froseth, Stenehjem, Wardner)

OASIS LEVY

AN ACT to amend and reenact subsection 5 of section 57-15-28.1 of the North Dakota Century Code, relating to the old-age and survivor insurance system tax levy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 57-15-28.1 of the North Dakota Century Code is amended and reenacted as follows:

5. A political subdivision, except a school district, levying a tax for old-age and survivors' insurance according to section 52-09-08, for social security, or for an employee retirement program established by the governing body, or for any combination of those purposes, may levy a tax not exceeding thirty mills.

Approved March 20, 1997
Filed March 20, 1997

CHAPTER 489**HOUSE BILL NO. 1292**

(Representative Kunkel)

SCHOOL DISTRICT SPECIAL RESERVE FUND USE

AN ACT to create and enact two new sections to chapter 57-19 of the North Dakota Century Code, relating to the control and use of school district special reserve funds; to amend and reenact section 57-19-02 of the North Dakota Century Code, relating to school district special reserve funds; to repeal sections 57-19-06, 57-19-07, and 57-19-08 of the North Dakota Century Code, relating to school district special reserve funds, the use of vouchers, and the liability of school district officers and county treasurers in connection with school district special reserve funds; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-19-02 of the North Dakota Century Code is amended and reenacted as follows:

57-19-02. Fund deposited with county treasurer Special reserve fund - Separate trust fund. ~~Such~~ The special reserve fund must be deposited with the county treasurer of the county in which the school district, or the greater part of its territory, is situated, is a separate trust fund for the use and benefit of the school district, to be drawn upon as provided in this chapter, and kept by such county treasurer as a separate trust fund. Moneys in ~~such~~ the fund may be deposited, held, or invested in the same manner as the sinking fund of the district or in the purchase of shares or securities of federal savings and loan associations or state-chartered building and loan associations, within the limits of federal insurance. ~~The county treasurer~~ school district business manager shall annually, upon a resolution of the school board, ~~pay~~ transfer to the school district general fund any part or all of the investment income or interest earned by the principal amount of the school district's special reserve fund.

SECTION 2. A new section to chapter 57-19 of the North Dakota Century Code is created and enacted as follows:

Special reserve funds - Transfer of control. Each county treasurer shall transfer control over school district reserve funds to local school boards and their business managers on the effective date of this Act, or as soon thereafter as practical.

SECTION 3. A new section to chapter 57-19 of the North Dakota Century Code is created and enacted as follows:

Special reserve fund - Use. If collections from taxes levied for the current budget are insufficient to meet the requirements of the budget for teacher salaries, heat, light, and fuel, a majority of the school board may direct the school district business manager to draw on funds in the special reserve fund of the district. The school board, by resolution, may withdraw without repayment fifty percent of the funds from the special reserve fund of the school district.

⁹ **SECTION 4. REPEAL.** Sections 57-19-06, 57-19-07, and 57-19-08 of the North Dakota Century Code are repealed.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 23, 1997

Filed March 24, 1997

⁹ Section 57-19-06 was amended by section 8 of House Bill No. 1146, chapter 175.

CHAPTER 490

SENATE BILL NO. 2331

(Senators Nething, Kringstad, Wogsland)
(Representatives Bernstein, Mahoney, Wardner)

FINANCIAL INSTITUTION TAX REVISIONS

AN ACT to create and enact chapter 57-35.3, a new subdivision to subsection 1 of section 57-38-01.2, a new subdivision to subsection 3 of section 57-38-30.3, and a new subdivision to subsection 4 of section 57-38-30.3 of the North Dakota Century Code, relating to taxation of financial institutions and allocation of tax revenue and to adjustments to taxable income for individuals; to amend and reenact section 10-30.2-11, subdivision i of subsection 1 of section 57-38-01.2, and subdivision g of subsection 1 of section 57-38-01.3 of the North Dakota Century Code, relating to taxation; to repeal chapters 57-35, 57-35.1, and 57-35.2 of the North Dakota Century Code, relating to the taxation of banks, trust companies and building and loan associations; to provide penalties; to provide continuing appropriations; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-30.2-11 of the North Dakota Century Code is amended and reenacted as follows:

10-30.2-11. Tax credits for investment by ~~banks, savings and loan associations, trust companies,~~ financial institutions and insurance companies. A ~~bank, savings and loan association, trust company,~~ financial institution as defined in section 57-35.3-01 or insurance company that invests in stock issued by the corporation, or in a separate legal entity such as a limited partnership or limited liability company created by the corporation as an affiliate for the purpose of obtaining investment capital from the public, or ~~investments~~ invests in either equity or debt instruments or securities offered by a small business investment company created by the corporation and licensed by the small business administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.], or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.], and any amendments thereto, is entitled, subject to section 10-30.2-13, to a credit in an amount equal to ~~twenty five~~ fifty percent of the total amount invested against the tax liability imposed against the taxpayer pursuant to ~~sections~~ section 26.1-03-17; ~~57-35-02, 57-35.1-02, and 57-35.2-02~~ or sections 57-35.3-01 through 57-35.3-12, if applicable. The tax credit allowed under this section must be credited against the taxpayer's tax liability for the taxable year in which full consideration for the investment is paid by the taxpayer. The amount by which the credit allowed by this section exceeds the taxpayer's tax liability in that year may be carried forward for seven taxable years. Except in the case of a tax credit that is carried forward from a prior tax year, no tax credit is allowed under this section to a taxpayer who received a tax credit for investment in the corporation and as a result of the dissolution of the corporation agreed to invest in the small business investment company created by the corporation and licensed by the small business administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.] or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.].

SECTION 2. Chapter 57-35.3 of the North Dakota Century Code is created and enacted as follows:

57-35.3-01. Definitions. As used in sections 57-35.3-01 through 57-35.3-12, unless the context otherwise requires:

1. "Commissioner" means the state tax commissioner.
2. "Financial institution" means:
 - a. A corporation or other business entity registered under state law as a bank holding company, registered under the Bank Holding Company Act of 1956, as amended [Pub. L. 84-240; 70 Stat. 133; 12 U.S.C. 1841 et seq.], or registered as a savings and loan holding company under the National Housing Act, as amended [Pub. L. 73-847; 48 Stat. 1246; 12 U.S.C. 1701 et seq.];
 - b. A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act [1864 ch. 106, §5; 13 Stat. 100; 12 U.S.C. 21 et seq.];
 - c. A savings association or federal savings bank as defined in the Federal Deposit Insurance Act [Pub. L. 81-967; 64 Stat. 873; 12 U.S.C. 1813(b)(1)];
 - d. A bank or thrift institution incorporated or organized under the laws of any state;
 - e. A trust company organized under the laws of any state, the United States, a dependency or insular possession of the United States, or a foreign country;
 - f. A corporation organized under the provisions of Public Law No. 63-6, §25A [38 Stat. 273; 12 U.S.C. 611 to 631];
 - g. An agency or branch of a foreign depository as defined in Public Law No. 95-369 [92 Stat. 607; 12 U.S.C. 3101];
 - h. A production credit association organized under the Farm Credit Act of 1933 [Pub. L. 73-98; 48 Stat. 257; 12 U.S.C. 1131 et seq.], all of the stock of which held by the federal production credit corporation has been retired;
 - i. A corporation the voting stock of which is more than fifty percent owned, directly or indirectly, by any person or business entity described in subdivisions a through h other than an insurance company taxable under section 26.1-03-17 or a corporation taxable under chapter 57-38;
 - j. A corporation or other business entity that derives more than fifty percent of its total gross income for financial accounting purposes from finance leases. For purposes of this subdivision, a "finance lease" means any lease transaction that is the functional equivalent of an extension of credit and which transfers substantially all of the benefits and risks incident to the ownership of property. The phrase includes any "direct financing lease" or "leverage lease" that

meets the criteria of financial accounting standards board statement no. 13, "accounting for leases", or any other lease that is accounted for as a financing by a lessor under generally accepted accounting principles. For the classification under this subdivision to apply:

- (1) The average of the gross income in the current tax year and immediately preceding two tax years must satisfy the more than fifty percent requirement; and
 - (2) Gross income from incidental or occasional transactions must be disregarded; or
- k. Any other person or business entity, other than an insurance company taxable under section 26.1-03-17, a real estate broker, a securities dealer, or a person or entity taxable under chapter 57-38, which derives more than fifty percent of its gross income from activities that a person described in subdivisions b through h and j is authorized to transact. For the purpose of this subsection, the computation of gross income does not include income from nonrecurring, extraordinary items.

The commissioner may exclude any person from the application of subdivision k upon that person proving, by clear and convincing evidence, that the income-producing activity of that person is not in substantial competition with those persons described in subdivisions b through h and j.

3. "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended.
4. "Taxable income" means federal taxable income, as defined in the Internal Revenue Code, determined on a separate legal entity basis, with the modifications provided in section 57-35.3-02.
5. "Taxpayer" means an entity subject to the tax imposed by sections 57-35.3-01 through 57-35.3-12.

Any term used in sections 57-35.3-01 through 57-35.3-12 has the same meaning as when used in a comparable context in the Internal Revenue Code unless a different meaning is clearly required or intended.

57-35.3-02. Taxable income.

1. In determining "taxable income" there must be added to federal taxable income:
 - a. The adjustments provided by subdivisions d, e, and i of subsection 1 of section 57-38-01.3;
 - b. Interest not subject to federal tax upon obligations of the state of North Dakota and its political subdivisions;
 - c. The amount of any charitable contribution deduction taken for federal income tax purposes under section 170 of the Internal Revenue Code;

- d. In the case of a building and loan association or savings and loan association, the amount of any bad debt reserve deduction taken for federal income tax purposes under section 585 of the Internal Revenue Code; and
 - e. Dividends paid by a federal reserve bank to the extent not subject to federal tax.
- 2. In determining "taxable income" there must be subtracted from federal taxable income:
 - a. The adjustments provided by subdivisions b, c, and h of subsection 1 of section 57-38-01.3;
 - b. In the case of a financial institution described in subdivision a of subsection 2 of section 57-35.3-01, the adjustment provided by subdivision g of subsection 1 of section 57-38-01.3;
 - c. In the case of a building and loan association or savings and loan association that uses the bad debt reserve method under section 585 of the Internal Revenue Code to account for bad debts for federal income tax purposes, an amount equal to the deduction for bad debts that would have been allowed under section 166(a) of the Internal Revenue Code if a deduction had not been claimed under section 585 or 593;
 - d. The amount of any adjustments taken into account for federal income tax purposes under section 593(g) of the Internal Revenue Code;
 - e. The amount of any interest and expenses relating to income not taxable for federal income tax purposes if the income is taxable under sections 57-35.3-01 through 57-35.3-12 and the interest and expenses were disallowed as deductions under section 171(a)(2), 265, or 291 of the Internal Revenue Code in computing federal taxable income;
 - f. The amount of any wage and salary expenses disallowed as deductions under section 280C(a) of the Internal Revenue Code in computing federal taxable income;
 - g. An amount equal to the deduction for charitable contributions that would be allowed for federal income tax purposes under section 170 of the Internal Revenue Code if the percentage limitation of section 170(b)(2) of the Internal Revenue Code was applied in all relevant taxable periods to taxable income, rather than federal taxable income, but computed without regard to this subdivision and that portion of subdivision a that refers to subdivision g of subsection 1 of section 57-38-01.3. However, no deduction is allowable for a contribution if and to the extent that a credit is allowed for the contribution under section 57-35.3-05; and
 - h. The amount of net income not allocated and apportioned to this state under sections 57-35.3-13 through 57-35.3-17, but only to the extent that the amount of net income not allocated and apportioned

to this state under those sections is not included in any adjustment made pursuant to the preceding subdivisions.

3. A net operating loss for any prior taxable period, attributable to North Dakota sources, must be allowed as a deduction from the sum otherwise calculated under this section to the extent that it exceeds the taxable income for each of the prior taxable years to which the loss may be carried under sections 57-35.3-01 through 57-35.3-12 or under prior chapters 57-35, 57-35.1, or 57-35.2, or corporations under chapter 57-38, governing the taxation of the taxpayer. Net operating losses may be carried forward for the same time period as federal net operating losses may be carried forward. If a financial institution uses an apportionment formula in the loss year to determine the amount of income or loss that is attributable to North Dakota sources, the amount of the North Dakota loss so determined is the net operating loss attributable to North Dakota sources for purposes of this subsection. No deduction may be taken for a carryforward when determining the amount of net operating loss that is attributable to North Dakota sources. No net operating loss carryback deduction is allowed.
4. The commissioner may adopt rules to prevent requiring income that had been previously taxed under sections 57-35.3-01 through 57-35.3-12, or prior law governing the taxation of financial institutions, from being taxed again because of the provisions of sections 57-35.3-01 through 57-35.3-12 and to adopt rules to prevent any income from becoming exempt from taxation because of sections 57-35.3-01 through 57-35.3-12 if it would otherwise have been subject to taxation under sections 57-35.3-01 through 57-35.3-12.
5. If it appears to the commissioner that the segregation of assets shown by any return made under sections 57-35.3-01 through 57-35.3-12 does not properly reflect the taxpayer's activity or business done, or the income earned from the taxpayer's activity or from business done in this state, because of the character of the taxpayer's business and the character and location of its assets, the commissioner may equitably adjust the tax.

57-35.3-03. Imposition and basis of tax. An annual tax is imposed upon each financial institution for the grant to it of the privilege of transacting, or for the actual transacting by it, of business within this state during any part of each tax year. The tax is based upon and measured by the taxable income of the financial institution for the calendar year. The rate of tax is seven percent of taxable income, but the amount of tax may not be less than fifty dollars.

57-35.3-04. Lieu tax. The tax imposed by sections 57-35.3-01 through 57-35.3-12 is in lieu of all other state, county, or local taxes or impositions, except motor vehicle fuel and special fuel taxes, sales and use taxes, motor vehicle excise taxes, and real property taxes.

57-35.3-05. Credits.

1. a. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the taxable year to nonprofit private institutions of higher education located within the state or to the North Dakota independent college fund. The amount allowable as a credit under

- (2) The credited amount must be deducted from the distributions that would otherwise be made to and from the county that received the tax overpayment until the sum of the deductions equals the credit; and
- (3) The deductions from distributions made by a county to each distributee must be proportionate to the overpayment of tax received by each distributee.

57-35.3-06. Tax return. On or before April fifteenth of each year, the taxpayer shall file with the commissioner, on forms or in a manner prescribed by the commissioner, a report in writing under oath showing the amount of taxable income of the financial institution for the preceding calendar year. If required by the commissioner, the return must be accompanied by a true copy of the federal income tax return of the taxpayer or by equivalent information in the form and manner prescribed by the commissioner. A true copy of the federal income tax return must be furnished to the commissioner by the taxpayer at any time after the taxpayer has filed the return required by this section if required by the commissioner before the expiration of the applicable period for assessment of additional tax liability under section 57-38-38. The commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that has the same validity and consequence as the actual signature and written declaration for a paper return. The commissioner may grant a reasonable extension of time for filing a return under the standards and terms applicable to other corporations under section 57-38-34.

57-35.3-07. Payment of tax. Two-sevenths of the tax before credits allowed under section 57-35.3-05, less the credit allowed under subsection 1 of section 57-35.3-05, must be paid to the commissioner on or before April fifteenth of the year in which the return is due, regardless of any extension of the time for filing the return granted under section 57-35.3-06. Five-sevenths of the tax before credits allowed under section 57-35.3-05, less the credit allowed under subsection 2 of section 57-35.3-05, must be paid to the commissioner on or before January fifteenth of the year after the return is due. Payment must be made by check, draft, or money order, payable to the commissioner, or as prescribed by the commissioner under subsection 15 of section 57-01-02.

57-35.3-08. Disposition of tax. The commissioner shall deposit the portion of the tax payable in the year the return is due in the general fund of the state treasury, and shall deposit the portion of the tax payable in the year after the return is due in the financial institution tax distribution fund of the state treasury, which is hereby created. Interest, penalty, and late tax payments attributable to each portion of the tax must be deposited in the appropriate fund.

57-35.3-09. Financial institution tax distribution fund - Continuing appropriation. The balance in the financial institution tax distribution fund on February first of 1999 and each subsequent year must be distributed in the following manner:

1. On or before February 1, 1999, the commissioner shall determine and certify to all county auditors:
 - a. The total amount of tax certified to each county under chapters 57-35 and 57-35.1 in the years 1993 through 1997; and

- b. The amount determined under subdivision a for each county as a percentage of the amount determined under subdivision a for all counties.
2. On or before February fifteenth of 1999 and each subsequent year, the commissioner shall determine and certify to the state treasurer an amount for payment by the state treasurer to each county treasurer equal to:
 - a. The percentage for that county determined under subdivision b of subsection 1; multiplied by
 - b. The balance in the financial institution tax distribution fund on February first of that year.
3. On or before March first of 1999 and each subsequent year, the state treasurer shall pay to the treasurer of each county the amount determined for that county under subsection 2. The amounts necessary to make these payments are appropriated to the state treasurer as a standing and continuing appropriation for distribution under this subdivision.
4. On or before February 1, 1999, the treasurer of each county shall determine and certify to the state treasurer and to all affected political subdivisions of the county:
 - a. The total amount of tax apportioned and distributed to the state, the county, and each political subdivision of the county under sections 57-35-13 and 57-35.1-06 in the years 1994 through 1998; and
 - b. The amount determined under subdivision a for each distributee as a percentage of the amount determined under subdivision a for all distributees.
5. On or before the tenth working day of March in 1999 and each subsequent year, the treasurer of each county shall determine and distribute to each distributee described in subsection 4 an amount equal to:
 - a. The percentage for that distributee determined under subdivision b of subsection 4; multiplied by
 - b. The amount of the payment by the state to the county in that year under subsection 3.

57-35.3-10. Certification of estimated tax. On or before August 1, 1998, and each subsequent year, the commissioner shall provide a preliminary estimate of the distribution to be made to each county in the following year. On or before November fifteenth of 1998 and each subsequent year, the commissioner shall determine the estimated amount of the distribution to be made to each county in the following year under section 57-35.3-09 and shall certify that amount to the county auditor.

57-35.3-11. Refunds. Refunds of the tax imposed by sections 57-35.3-01 through 57-35.3-12, including related interest, must be paid from the state general

fund. An amount equal to the portion of any such refund attributable to tax collections deposited in the financial institution tax distribution fund must be reimbursed to the state general fund from the first available assets of the financial institution tax distribution fund, with interest thereon at the rate prescribed by section 57-38-35.2 from the date of payment of the refund from the state general fund. The amounts necessary to pay these refunds are hereby appropriated to the state treasurer as a standing and continuing appropriation for payment under this section.

57-35.3-12. Applicable provisions of chapter 57-38 relating to administration, interest, and penalties. The provisions of section 57-38-33, subsection 1 of section 57-38-34, sections 57-38-34.4, 57-38-35.1, 57-38-35.2, 57-38-37, 57-38-38, 57-38-39, 57-38-40, 57-38-44, 57-38-45, 57-38-46, 57-38-47, 57-38-48, 57-38-49, 57-38-50, 57-38-51, 57-38-53, 57-38-54, 57-38-56, and 57-38-57, insofar as consistent therewith, govern the administration of sections 57-35.3-01 through 57-35.3-12. For this purpose, the term "corporation", as used in the sections listed in this section, includes a financial institution.

57-35.3-13. Apportionment and allocation - General.

1. Except as otherwise specifically provided, a financial institution whose business activity is taxable both within and without this state shall allocate and apportion its net income as provided in sections 57-35.3-13 through 57-35.3-17. All items of nonbusiness income, meaning income that is not includable in the apportionable income tax base, must be allocated under chapter 57-38.1. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States the effectively connected income of which, as defined under the Internal Revenue Code, is taxable both within this state and within another state, other than the state in which it is organized, shall allocate and apportion its net income as provided in sections 57-35.3-13 through 57-35.3-17.
2. All business income, meaning income that is includable in the apportionable income tax base, must be apportioned to this state by multiplying such income by the apportionment percentage. The apportionment percentage is determined by adding the taxpayer's receipts factor under section 57-35.3-15, property factor under section 57-35.3-16, and payroll factor under section 57-35.3-17 together and dividing the sum by three. If one of the factors is missing, the two remaining factors must be added and the sum divided by two. If two of the factors are missing, the remaining factor is the apportionment percentage. A factor is missing if both its numerator and denominator are zero, but it is not missing merely because its numerator is zero.
3. Each factor must be computed according to the method of accounting, cash or accrual basis, used by the taxpayer for the taxable year.
4. If the allocation and apportionment provisions of sections 57-35.3-13 through 57-35.3-17 do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the commissioner may require, in respect to all or any part of the taxpayer's business activity, if reasonable:
 - a. Separate accounting;

- b. The exclusion of any one or more of the factors;
- c. The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in this state; or
- d. The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

57-35.3-14. Apportionment and allocation - Definitions. As used in sections 57-35.3-13 through 57-35.3-17, unless the context otherwise requires:

1. "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable year, or on such later date in the taxable year when the customer relationship began, as the address where any notice, statement, or bill relating to a customer's account is mailed.
2. "Borrower or credit card holder located in this state" means:
 - a. A borrower, other than a credit card holder, who is engaged in a trade or business that maintains its commercial domicile in this state; or
 - b. A borrower who is not engaged in a trade or business or a credit card holder whose billing address is in this state.
3. "Commercial domicile" means:
 - a. The headquarters of the trade or business, meaning the place from which the trade or business is principally managed and directed; or
 - b. If a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile must be deemed for the purposes of sections 57-35.3-13 through 57-35.3-17 to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed and directed. It is presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable year.
4. "Commissioner" means the state tax commissioner.
5. "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services that are included in such employee's gross income under the Internal Revenue Code. In the case of employees not subject to the Internal Revenue Code, such as those employed in foreign countries, the determination of whether such payments would constitute gross income to such employees under the Internal Revenue Code must be made as though those employees were subject to the Internal Revenue Code.

6. "Credit card" means a credit, travel, or entertainment card.
7. "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.
8. "Employee" means, with respect to a particular taxpayer, any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.
9. "Financial institution" has the meaning given in section 57-35.3-01.
10. "Gross rents" means the actual sum of money or other consideration payable for the use or possession of property.
 - a. "Gross rents" includes:
 - (1) Any amount payable for the use or possession of real property or tangible property whether designated as a fixed sum of money or as a percentage of receipts, profits, or otherwise;
 - (2) Any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs, or any other amount required to be paid by the terms of a lease or other arrangement; and
 - (3) A proportionate part of the cost of any improvement to real property made by or on behalf of the taxpayer which reverts to the owner or lessor upon termination of a lease or other arrangement. The amount to be included in gross rents is the amount of amortization or depreciation allowed in computing the taxable income base for the taxable year. However, if a building is erected on leased land by or on behalf of the taxpayer, the value of the land is determined by multiplying the gross rent by eight and the value of the building is determined in the same manner as if owned by the taxpayer.
 - b. "Gross rents" does not include:
 - (1) Reasonable amounts payable as separate charges for water and electric service furnished by the lessor;
 - (2) Reasonable amounts payable as service charges for janitorial services furnished by the lessor;
 - (3) Reasonable amounts payable for storage, provided such amounts are payable for space not designated and not under the control of the taxpayer; and
 - (4) That portion of any rental payment which is applicable to the space subleased from the taxpayer and not used by it.

11. "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended.
12. "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and its customer, or the purchase, in whole or in part, of such extension of credit from another. Loans include participation, syndications, and leases treated as loans for federal income tax purposes. "Loan" does not include properties treated as loans under section 595 of the Internal Revenue Code; futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; non-interest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in an REMIC, or other mortgage-backed or asset-backed security; and other similar items.
13. "Loan secured by real property" means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.
14. "Merchant discount" means the fee or negotiated discount charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the credit card holder.
15. "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.
16. "Person" means an individual, estate, trust, partnership, corporation, and any other business entity.
17. "Principal base of operations" with respect to transportation property means the place of more or less permanent nature from which said property is regularly directed or controlled. With respect to an employee, the "principal base of operations" means the place of more or less permanent nature from which the employee regularly starts the employee's work and to which the employee customarily returns in order to receive instructions from the employee's employer, communicates with the employee's customers or other persons, or performs any other functions necessary to the exercise of the employee's trade or profession at some other point or points.
18. "Real property owned" and "tangible personal property owned" mean real and tangible personal property, respectively, on which the taxpayer may claim depreciation for federal income tax purposes, or to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes, or could claim depreciation if subject to federal income tax. Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

19. "Regular place of business" means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied, and used by employees of the taxpayer.
20. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States or any foreign country.
21. "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.
22. "Taxable" means either:
 - a. That a taxpayer is subject in another state to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax including a bank shares tax, a single business tax, or an earned surplus tax, or any tax that is imposed upon or measured by net income; or
 - b. That another state has jurisdiction to subject the taxpayer to any of those taxes regardless of whether or not the state subjects the taxpayer to those taxes.
23. "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels, and motor vehicles, as well as any equipment or containers attached to such property, such as rolling stock, barges, trailers, or the like.

57-35.3-15. Apportionment and allocation - Receipts factor.

1. General. The receipts factor is a fraction, the numerator of which is the receipts of the taxpayer in this state during the taxable year and the denominator of which is the receipts of the taxpayer within and without this state during the taxable year. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator. The receipts factor includes only those receipts described in this section which constitute business income and are included in the computation of the apportionable income base for the taxable year.
2. Receipts from the lease of real property. The numerator of the receipts factor includes receipts from the lease or rental of real property owned by the taxpayer if the property is located within this state or receipts from the sublease of real property if the property is located within this state.
3. Receipts from the lease of tangible personal property.
 - a. Except as described in subdivision b, the numerator of the receipts factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.

- b. Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the receipts factor to the extent that the property is used in this state. The extent an aircraft will be deemed to be used in this state and the amount of receipts that is to be included in the numerator of this state's receipts factor is determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft. If the extent of the use of any transportation property within this state cannot be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle will be deemed to be used wholly in the state in which it is registered.
4. Interest from loans secured by real property.
- a. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the receipts described in this subsection are included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, then the receipts described in this subsection must be included in the numerator of the receipts factor if the borrower is located in this state.
- b. The determination of whether the real property securing a loan is located within this state must be made as of the time the original agreement was made and any and all subsequent substitutions of collateral must be disregarded.
5. Interest from loans not secured by real property. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.
6. Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans include income recorded under the coupon stripping rules of section 1286 of the Internal Revenue Code.
- a. The amount of net gains, but not less than zero, from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor under subsection 4 and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.
- b. The amount of net gains, but not less than zero, from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction the numerator of which is the amount included in the numerator of the

receipts factor under subsection 5 and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

7. Receipts from credit card receivables. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to cardholders, such as annual fees, if the billing address of the cardholder is in this state.
8. Net gains from the sale of credit card receivables. The numerator of the receipts factor includes net gains, but not less than zero, from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under subsection 7 and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to cardholders.
9. Credit card issuer's reimbursement fees. The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under subsection 7 and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to cardholders.
10. Receipts from merchant discount. The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. Such receipts must be computed net of any cardholder chargebacks, but may not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its cardholders.
11. Loan servicing fees.
 - a. (1) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor under subsection 4 and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.
 - (2) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor under subsection 5 and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.
 - b. In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor must include such fees if the borrower is located in this state.

12. Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this section if the service is performed in this state. If the service is performed both within and without this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this section, if a greater proportion of the income-producing activity is performed in this state based on cost of performance.
13. Receipts from investment assets and activities and trading assets and activities.
- a. Interest; dividends; net gains, but not less than zero; and other income from investment assets and activities and from trading assets and activities must be included in the receipts factor. Investment assets and activities and trading assets and activities include investment securities, trading account assets, federal funds, securities purchased and sold under agreements to resell or repurchase, options, futures contracts, forward contracts, notional principal contracts such as swaps, equities, and foreign currency transactions. With respect to the investment and trading assets and activities described in paragraphs 1 and 2, the receipts factor must include the amounts described in those paragraphs.
- (1) The receipts factor must include the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.
- (2) The receipts factor must include the amount by which interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.
- b. The numerator of the receipts factor includes interest; dividends; net gains, but not less than zero; and other income from investment assets and activities and from trading assets and activities described in subdivision a which are attributable to this state.
- (1) The amount of interest; dividends; net gains, but not less than zero; and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.
- (2) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in paragraph 1 of subdivision a from such funds and such securities by a

- fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.
- (3) The amount of interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, but excluding amounts described in paragraph 1 or 2, attributable to this state and included in the numerator is determined by multiplying the amount described in paragraph 2 of subdivision a by a fraction, the numerator of which is the average value of such trading assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.
- (4) For purposes of this subdivision, average value must be determined using the rules for determining the average value of tangible personal property set forth in subsections 3 and 4 of section 57-35.3-16.
- c. In lieu of using the method set forth in subdivision b, the taxpayer may elect, or the commissioner may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this subdivision.
- (1) The amount of interest; dividends; net gains, but not less than zero; and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross income from such assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.
- (2) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in paragraph 1 of subdivision a from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.
- (3) The amount of interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, but excluding amounts

described in paragraphs 1 and 2, attributable to this state and included in the numerator is determined by multiplying the amount described in paragraph 2 of subdivision a by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

- d. If the taxpayer elects or is required by the commissioner to use the method set forth in subdivision c, the taxpayer shall use this method on all subsequent returns unless the taxpayer receives prior permission from the commissioner to use, or the commissioner requires, a different method.
 - e. The taxpayer has the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. If the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one such regular place of business is in this state and one such regular place of business is outside this state, such asset or activity must be considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, such policies and guidelines must be presumed to be established at the commercial domicile of the taxpayer.
14. All other receipts. The numerator of the receipts factor includes all other receipts under the rules set forth in chapter 57-38.1, to the extent not inconsistent with this section.
 15. Attribution of certain receipts to commercial domicile. All receipts that would be assigned under this section to a state in which the taxpayer is not taxable must be included in the numerator of the receipts factor if the taxpayer's commercial domicile is in this state.

57-35.3-16. Apportionment and allocation - Property factor.

1. General. The property factor is a fraction, the numerator of which is the average value of real property and tangible personal property rented to the taxpayer that is located or used within this state during the taxable year, the average value of the taxpayer's real and tangible personal property owned that is located or used within this state during the taxable year, and the average value of the taxpayer's loans and credit card receivables that are located within this state during the taxable year, and the denominator of which is the average value of all such property located or used within and without this state during the taxable year.
2. Property included. The property factor includes only property the income or expenses of which are included, or would have been included if not fully depreciated or expensed or depreciated or expensed to a

nominal amount, in the computation of the apportionable income base for the taxable year.

3. Value of property owned by the taxpayer.
 - a. The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation, or amortization.
 - b. Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged off in whole or in part for federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines which is treated as charged off for federal income tax purposes must be treated as charged off for purposes of this section.
 - c. Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged off in whole or in part for federal income tax purposes, the portion of the receivable charged off is not outstanding.
4. Average value of property owned by the taxpayer. The average value of property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable year and the value on the last day of the taxable year and dividing the sum by two. If averaging on this basis does not properly reflect average value, the commissioner may require averaging on a more frequent basis. The taxpayer may elect to average on a more frequent basis. When averaging on a more frequent basis is required by the commissioner or is elected by the taxpayer, the same method of valuation must be used consistently by the taxpayer with respect to property within and without this state and on all subsequent returns unless the taxpayer receives prior permission from the commissioner or the commissioner requires a different method of determining average value.
5. Average value of real property and tangible personal property rented to the taxpayer.
 - a. The average value of real property and tangible personal property that the taxpayer has rented from another, and which is not treated as property owned by the taxpayer for federal income tax purposes, must be determined annually by multiplying the gross rents payable during the taxable year by eight.
 - b. If the use of the general method described in this subsection results in inaccurate valuations of rented property, any other method that properly reflects the value may be adopted by the commissioner or by the taxpayer when approved in writing by the commissioner. Once approved, such other method of valuation must be used on all subsequent returns unless the taxpayer receives prior approval from the commissioner or the commissioner requires a different method of valuation.

6. Location of real property and tangible personal property owned by or rented to the taxpayer.
- a. Except as described in subdivision b, real property and tangible personal property owned by or rented to the taxpayer is considered to be located within this state if it is physically located, situated, or used within this state.
 - b. Transportation property is included in the numerator of the property factor to the extent that the property is used in this state. The extent an aircraft will be deemed to be used in this state and the amount of value that is to be included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere. If the extent of the use of any transportation property within this state cannot be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle will be deemed to be used wholly in the state in which it is registered.
7. Location of loans.
- a. (1) A loan is considered to be located within this state if it is properly assigned to a regular place of business of the taxpayer within this state.
 - (2) A loan is properly assigned to the regular place of business with which it has a preponderance of substantive contacts. A loan assigned by the taxpayer to a regular place of business without the state must be presumed to have been properly assigned if:
 - (a) The taxpayer has assigned, in the regular course of the taxpayer's business, such loan on its records to a regular place of business consistent with federal or state regulatory requirements;
 - (b) Such assignment on the taxpayer's records is based upon substantive contacts of the loan to that regular place of business; and
 - (c) The taxpayer uses those records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.
 - (3) The presumption of proper assignment of a loan provided in paragraph 2 may be rebutted upon a showing by the commissioner, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur at the regular place of business to which it was assigned on the taxpayer's records. When such presumption has been rebutted, the loan must then be located within this state if the taxpayer had a regular place of business

- within this state at the time the loan was made and the taxpayer fails to show, by a preponderance of the evidence, that the preponderance of substantive contacts regarding such loan did not occur within this state.
- b. In the case of a loan that is assigned by the taxpayer to a place without this state which is not a regular place of business, it must be presumed, subject to rebuttal by the taxpayer on a showing supported by the preponderance of evidence, that the preponderance of substantive contacts regarding the loan occurred within this state if, at the time the loan was made, the taxpayer's commercial domicile, as defined in subsection 3 of section 57-35.3-14, was within this state.
- c. To determine the state in which the preponderance of substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issue must be reviewed on a case-by-case basis and consideration must be given to such activities as the solicitation, investigation, negotiation, approval, and administration of the loan. For purposes of this subdivision:
- (1) "Administration" means the process of managing the account. This process includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement, and proceeding against the borrower or the security interest if the borrower is in default. Such activity is located at the regular place of business which oversees this activity.
 - (2) "Approval" means the procedure by which employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement. Such activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed. If the board of directors makes the final determination, such activity is located at the commercial domicile of the taxpayer.
 - (3) "Investigation" means the procedure by which employees of the taxpayer determine the credit-worthiness of the customer as well as the degree of risk involved in making a particular agreement. Such activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed.
 - (4) "Negotiation" means the procedure by which employees of the taxpayer and the taxpayer's customer determine the terms of the agreement such as the amount, duration, interest rate, frequency of repayment, currency denomination, and security required. Such activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed.

- (5) "Solicitation" means either active or passive solicitation. Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. Such activity is located at the regular place of business which the taxpayer's employee is regularly connected with or working out of, regardless of where the services of such employee were actually performed. Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case.
8. Location of credit card receivables. For purposes of determining the location of credit card receivables, credit card receivables must be treated as loans and are subject to the provisions of subsection 7.
9. Period for which properly assigned loan remains assigned. A loan that has been properly assigned to a state, absent any change of material fact, must remain assigned to that state for the length of the original term of the loan. Thereafter, that loan may be properly assigned to another state if that loan has a preponderance of substantive contact to a regular place of business there.

57-35.3-17. Apportionment and allocation - Payroll factor.

1. General. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation paid both within and without this state during the taxable year. The payroll factor must include only that compensation that is included in the computation of the apportionable income tax base for the taxable year.
2. Compensation relating to nonbusiness income. The compensation of any employee for services or activities that are connected with the production of nonbusiness income, meaning income which is not includable in the apportionable income base, and payments made to any independent contractor or any other person not properly classifiable as an employee must be excluded from both the numerator and denominator of the factor.
3. When compensation paid in this state. Compensation is paid in this state if any one of the following tests, applied consecutively, is met:
- a. The employee's services are performed entirely within this state.
 - b. The employee's services are performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The term "incidental" means any service that is temporary or transitory in nature or which is rendered in connection with an isolated transaction.
 - c. If the employee's services are performed both within and without this state, the employee's compensation must be attributed to this state:

- (1) If the employee's principal base of operations is within this state;
- (2) If there is no principal base of operations in any state in which some part of the services are performed, but the place from which the services are directed or controlled is in this state; or
- (3) If the principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed but the employee's residence is in this state.

¹⁰ **SECTION 3. AMENDMENT.** Subdivision i of subsection 1 of section 57-38-01.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- i. Reduced by any dividends or income, up to a maximum of fifteen thousand dollars, received from stock or interest in any corporation and included in the adjusted gross income as computed for federal income tax purposes where the income of such corporation has been assessed and tax paid by the corporation under this chapter or ~~chapter 57-35, 57-35.1, or 57-35.2~~ sections 57-35.3-01 through 57-35.3-12 and such dividends or income was received by the taxpayer as income during the income year if such corporation has reported the name and address of each North Dakota resident owning stock and the amount of dividends or income paid each such person during the year; provided, that when only part of the income of any corporation shall have been assessed and corporation income tax paid thereon under this chapter or ~~chapter 57-35, 57-35.1, or 57-35.2~~ sections 57-35.3-01 through 57-35.3-12, only a corresponding part of the dividends or income received therefrom and included in federal adjusted gross income shall be subtracted. The commissioner is hereby authorized to prescribe rules and regulations to implement this subdivision to avoid injustice to taxpayers, to prevent duplication of deductions, and to eliminate taxation of income not fairly and properly taxable under this chapter.

¹¹ **SECTION 4.** A new subdivision to subsection 1 of section 57-38-01.2 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

Reduced by an amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under chapter 57-35.3.

¹⁰ Section 57-38-01.2 was also amended by section 1 of House Bill No. 1104, chapter 491, and section 4 of Senate Bill No. 2331, chapter 490.

¹¹ Section 57-38-01.2 was also amended by section 1 of House Bill No. 1104, chapter 491, and section 3 of Senate Bill No. 2331, chapter 490.

SECTION 5. AMENDMENT. Subdivision g of subsection 1 of section 57-38-01.3 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- g. Reduced by dividends or income received by any person from stock or interest in any corporation, the income of which has been assessed and paid by a corporation under this chapter or ~~chapter 57-35, 57-35.1, or 57-35.2~~ sections 57-35.3-01 through 57-35.3-12, received by the taxpayer and included in the gross income within the income year if such corporation has reported the name and address of each person owning stock and the amount of dividends or income paid each such person during the year, but when only part of the income of any corporation has been assessed and income tax paid under this chapter or ~~chapter 57-35, 57-35.1, or 57-35.2~~ sections 57-35.3-01 through 57-35.3-12, only a corresponding part of the dividends or income received therefrom may be deducted.

¹² **SECTION 6.** A new subdivision to subsection 3 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

An amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under chapter 57-35.3.

¹³ **SECTION 7.** A new subdivision to subsection 4 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

An amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under chapter 57-35.3.

SECTION 8. REPEAL. Chapters 57-35, 57-35.1, and 57-35.2 of the North Dakota Century Code are repealed.

SECTION 9. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1996.

Approved April 4, 1997
Filed April 4, 1997

¹² Section 57-38-30.3 was also amended by section 2 of House Bill No. 1471, chapter 492, and section 7 of Senate Bill No. 2331, chapter 490.

¹³ Section 57-38-30.3 was also amended by section 2 of House Bill No. 1471, chapter 492, and section 6 of Senate Bill No. 2331, chapter 490.

CHAPTER 491

HOUSE BILL NO. 1104

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

NONRESIDENT INCOME APPORTIONMENT AND EMPLOYER WITHHOLDING

AN ACT to amend and reenact subdivision h of subsection 1 of section 57-38-01.2, subsection 5 of section 57-38-04, and subsection 2 of section 57-38-60 of the North Dakota Century Code, relating to allocation and apportionment of nonresident income and employer income tax withholding return requirements; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁴ **SECTION 1. AMENDMENT.** Subdivision h of subsection 1 of section 57-38-01.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- h. ~~Reduced~~ Except for residents, reduced by the amount of net income not allocated and apportioned to this state under the provisions of chapter 57-38.1, but only to the extent that the amount of net income not allocated and apportioned to this state under the provisions of that chapter is not included in any adjustment made pursuant to the preceding subdivisions.

SECTION 2. AMENDMENT. Subsection 5 of section 57-38-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. Whenever a trade or business is carried on partly within and partly without this state by a nonresident of this state, the entire income therefrom must be allocated to this state and to other states, according to the provisions of ~~sections 57-38-12, 57-38-13, and 57-38-14~~ chapter 57-38.1, providing for allocation and apportionment of income of corporations doing business within and without this state.

SECTION 3. AMENDMENT. Subsection 2 of section 57-38-60 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Every employer shall file a return on forms prescribed by the tax commissioner with each payment made to the tax commissioner under this section which ~~shall show the total amount of wages paid to employees, the amount of federal income tax deducted and withheld during the period covered by the return,~~ shows the amount of tax

¹⁴ Section 57-38-01.2 was also amended by section 3 of Senate Bill No. 2331, chapter 490, and section 4 of Senate Bill No. 2331, chapter 490.

imposed under this chapter which was deducted and withheld during the period covered by the return, and such other information as the tax commissioner may require.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1996.

Approved January 27, 1997
Filed January 27, 1997

CHAPTER 492

HOUSE BILL NO. 1471

(Representatives Niemeier, Wardner, Jensen, Kerzman)
(Senators Andrist, DeMers)

FAMILY MEMBER CARE EXPENSE INCOME TAX CREDIT

AN ACT to create and enact a new section to chapter 57-38 and a new subsection to section 57-38-30.3 of the North Dakota Century Code, relating to an individual or trust income tax credit for expenses of caring for certain family members; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Credit for expenses of caring for certain family members.

1. An individual is entitled to a credit against the tax imposed under section 57-38-29 or 57-38-30.3 in the amount of qualified care expenses under this section paid by the individual for the care of a qualifying family member during the taxable year.
2. A qualifying family member is an individual who has taxable income of fifteen thousand dollars or less or a married individual with taxable income of thirty thousand dollars or less, including that of the individual's spouse, for the taxable year. A qualifying family member must be related to the taxpayer by blood or marriage and either sixty-five years of age or older or determined to be disabled by the social security administration.
3. a. Qualified care expenses include payments by the taxpayer for home health agency services, companionship services, personal care attendant services, homemaker services, adult day care, respite care, health care equipment and supplies, and other expenses for goods or services that are necessary to allow the qualifying family member to avoid placement in a long-term care facility and which are:
 - (1) Provided to or for the benefit of the qualifying family member or to assist the taxpayer in caring for the qualifying family member;
 - (2) Provided by an organization or individual not related to the taxpayer or the qualifying family member; and
 - (3) Not compensated for by insurance or federal or state assistance programs.
- b. For purposes of this subsection, "companionship services" means services that provide fellowship, care, and protection for individuals

who, because of advanced age or physical or mental disabilities, cannot care for their own needs. Those services may include household work related to the care of the aged or disabled person, including meal preparation, bed making, washing of clothes, and other similar services, and may include the performance of general household work if that work does not exceed twenty percent of the total weekly hours worked. "Companionship services" does not include services relating to the care and protection of the aged or disabled which require and are performed by trained personnel, including a registered or practical nurse, and does not include services of individuals who provide care and protection for infants and young children who are not physically or mentally disabled.

4. The percentage amount of credit allowable under this section is:
 - a. For a taxpayer whose taxable income does not exceed twenty-five thousand dollars, thirty percent of qualified elderly care expenses; or
 - b. For a taxpayer whose taxable income exceeds twenty-five thousand dollars, the greater of:
 - (1) Twenty percent of qualified elderly care expenses; or
 - (2) Thirty percent of qualified elderly care expenses, minus one percent of those expenses for each two thousand dollars or fraction of two thousand dollars by which the taxable income of the taxpayer for the taxable year exceeds twenty-five thousand dollars.
5. The dollar amount of credit allowable under this section is:
 - a. Reduced by one dollar for each dollar of the taxable income over fifty thousand dollars for a taxpayer whose taxable income exceeds fifty thousand dollars;
 - b. Limited to two thousand dollars per qualifying family member in a taxable year and to four thousand dollars total for two or more qualifying family members in a taxable year; and
 - c. Prorated among multiple taxpayers who each contribute to qualified care expenses of the same qualified family member in a taxable year in the same proportion that their contributions bear to the total qualified care expenses paid by those taxpayers for that qualified family member.
6. A deduction or credit is not allowed under any other provision of this chapter with respect to any amount for which a credit is allowed under this section. The credit allowed under this section may not be claimed as a carryback or carryforward and may not be refunded if the taxpayer has no tax liability.
7. In the case of a married individual filing a separate return, the percentage amount of credit under subsection 4 and the dollar amount of credit under subsection 5 are limited to one-half of the amounts indicated in those subsections.

¹⁵ **SECTION 2.** A new subsection to section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

A taxpayer filing a return under this section is entitled to the credit provided under section 1 of this Act.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1996.

Approved March 26, 1997
Filed March 26, 1997

¹⁵ Section 57-38-30.3 was also amended by section 6 of Senate Bill No. 2331, chapter 490, and section 7 of Senate Bill No. 2331, chapter 490.

CHAPTER 493**HOUSE BILL NO. 1332**

(Representative Timm)

**INCOME TAX INTEREST, PENALTIES, AND
OVERPAYMENT**

AN ACT to create and enact a new subdivision to subsection 6 of section 57-38-38 and a new subsection to section 57-38-62 of the North Dakota Century Code, relating to the exemption of penalties on refunded income taxes from an amended return or claim and permitting the application of a tax overpayment for a year as an estimated tax payment for the succeeding year; to amend and reenact section 57-38-35.2 and subsections 1 and 2 of section 57-38-45 of the North Dakota Century Code, relating to income tax interest and penalties; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-35.2 of the North Dakota Century Code is amended and reenacted as follows:

57-38-35.2. Interest payments. ~~Interest at the rate of ten percent per annum must be allowed and paid upon overpayments of tax as follows:~~

1. ~~Interest~~ If, for any portion of the time period over which interest is otherwise computed under this section on a refund, interest was previously computed under subsection 1 of section 57-38-45 on additional tax due for any tax period, the interest computed on the refund for that portion of the time period must be computed at the same rate and in the same manner that was used in computing the interest on the additional tax due, but only to the extent that the amount of the refund does not exceed the amount of the additional tax due.
2. To the extent subsection 1 does not apply, interest at the rate of ten percent per annum must be allowed and paid upon overpayments of income taxes as follows:
 - a. No interest accrues on refunds arising from excess income tax withholding or overpayment of declarations of estimated tax ~~accrues for~~ reported on the taxpayer's return for that tax period if a refund payment ~~from sixty days~~ is made within forty-five days after the due date of the return or after the date the return was filed, whichever comes later.
 2. b. Interest on refunds arising from amended returns or claims made for credit or refund accrues for payment from ~~sixty days after~~ the due date of the return ~~or after the date the return was filed or after the date the tax due was fully paid, whichever comes later,~~ without regard to extensions of the time for filing the return, to the date of payment of the refund, except that if the refund payment is made within forty-five days of the date the amended return or claim is

filed, interest accrues to the date the amended return or claim is filed.

- ~~3.~~ c. Interest on refunds arising from net operating loss carrybacks or capital loss carrybacks accrues for payment from ~~sixty days after the due date an amended~~ of the return claiming a credit or refund because of an operating loss carryback or capital loss carryback is filed with the tax commissioner for the year, determined without regard to extensions of the time for filing, giving rise to the loss carryback, to the date of payment of the refund, except that no interest accrues if the refund payment is made within forty-five days of the date the amended return or claim is filed to claim the refund attributable to the net operating loss or capital loss carryback.
- ~~4.~~ 3. No interest may be paid on refunds arising from amended returns or other claims filed for taxable years beginning before January 1, 1979.

SECTION 2. A new subdivision to subsection 6 of section 57-38-38 of the North Dakota Century Code is created and enacted as follows:

If a determination is made under subdivision a of this subsection that additional tax is due and the tax commissioner has previously refunded income taxes related to the amended return or claim, subsection 2 of section 57-38-45 does not apply to the refunded amount.

SECTION 3. AMENDMENT. Subsections 1 and 2 of section 57-38-45 of the North Dakota Century Code are amended and reenacted as follows:

1. In addition to other increases to tax and penalty prescribed in this chapter, a taxpayer is subject to interest as follows:
 - a. Any taxpayer who requests and is granted an extension of time for filing a return shall pay, with the tax, interest on the tax at the rate of twelve percent per annum from the date the tax would have been due if the extension had not been granted to the date the tax is paid.
 - b. If any amount of tax imposed by this chapter, including tax withheld by an employer, is not paid on or before the due date or extended due date for ~~such~~ the payment, there must be added to the tax interest at the rate of one percent per month or fraction of a month during which the tax remains unpaid, computed from the due date of the return to the date paid excepting the month in which the return was required to be filed or the tax became due.
 - c. If upon audit an additional tax is found to be due, there must be added to the additional tax due interest at the rate of one percent of ~~such~~ the additional tax for each month or fraction of a month during which the tax remains unpaid, computed from the due date of the return to the date paid, excepting the month in which the return was required to be filed or the tax became due.
 - d. If the mathematical verification of a taxpayer's return results in additional tax due, there must be added to the additional tax interest at the rate of one percent of ~~such~~ the additional tax due for each month or fraction of a month during which the tax remains

unpaid, computed from the due date of the return to the date paid, excepting the month in which the return was required to be filed or the tax became due.

- e. If, for any portion of the time period over which interest is otherwise computed under this subsection on additional tax due, interest was previously computed under subsection 2 of section 57-38-35.2 on a refund for any tax period, the interest computed on the additional tax due for that portion of the time period must be computed at the same rate and in the same manner that was used in computing the interest on the refund, but only to the extent that the amount of the additional tax due does not exceed the amount of the refund.
 - f. If a deficiency is determined for a tax period for which there was an overpayment that was applied to the following tax period's estimated tax under section 4 of this Act, interest accrues with respect to the amount of the deficiency that is equal to or less than the amount of the overpayment applied from the estimated tax payment date to which the overpayment was applied.
2. In addition to the interest prescribed in this chapter, a taxpayer ~~shall be~~ is subject to additions to tax and penalty as follows:
- a. If any taxpayer, without intent to evade any tax imposed by this chapter, shall fail to pay the amount shown as tax due on any return, including tax withheld by an employer, filed on or before the due date or extended due date prescribed therefor, there shall be added to the tax a penalty of five percent thereof, or five dollars, whichever is greater.
 - b. If any taxpayer, without intent to evade any tax imposed by this chapter, shall fail to file a return, including the employer's withheld tax return, on or before the due date or extended due date prescribed therefor, there shall be added a penalty equal to five percent of the tax required to be reported, or five dollars, whichever is greater, if the failure is for not more than one month, counting each fraction of a month as an entire month, with an additional five percent for each additional month or fraction thereof during which ~~such~~ the failure continues, not exceeding twenty-five percent in the aggregate.
 - c. If upon audit of a taxpayer's return, including tax withheld by an employer, an additional tax is found to be due, there shall be added to the tax penalty as prescribed in subdivision a or b.
 - d. If the mathematical verification of a taxpayer's return, including tax withheld by an employer, results in additional tax due, there shall be added to the tax penalty as prescribed in subdivision a or b.
 - e. The provisions of subdivision a, b, c, or d do not apply to the extent it has been determined that the taxpayer has offsetting overpayments of income taxes which have not been refunded.
 - f. An employer, required to file returns under subsection 1 of section 57-38-60, with four to eight delinquent original tax returns or

payments is subject to a penalty of ten percent of the tax due or twenty-five dollars, whichever is greater. An employer with nine or more delinquent original returns or payments is subject to a penalty of fifteen percent of the tax due or one hundred dollars, whichever is greater.

SECTION 4. A new subsection to section 57-38-62 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

An individual or corporation may apply a tax overpayment from a preceding taxable year as an estimated tax payment on the individual's or corporation's behalf for the taxable year succeeding the overpayment. The individual or corporation may elect to apply the overpayment to specific estimated tax installments. If the individual or corporation does not specify the installment period toward which the overpayment is to be applied, the individual or corporation must be considered to have elected to apply the overpayment toward the first required estimated tax installment for the succeeding taxable year.

SECTION 5. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1997, except subdivision f of subsection 1 of section 57-38-45 and section 4 of this Act which are effective for taxable periods beginning after December 31, 1996.

Approved March 26, 1997

Filed March 27, 1997

CHAPTER 494**SENATE BILL NO. 2089**

(Senator Thane)

(At the request of Job Service North Dakota)

JOB SERVICE AND BUREAU TAX REFUND SETOFF

AN ACT to amend and reenact subsection 1 of section 57-38.3-02 of the North Dakota Century Code, relating to inclusion of job service North Dakota and the workers compensation bureau in the definition of claimant agency for income tax refund setoff purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-38.3-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Claimant agency" means the department of human services, job service North Dakota, the workers compensation bureau, or the North Dakota guaranteed student loan program.

Approved April 1, 1997

Filed April 2, 1997

CHAPTER 495**HOUSE BILL NO. 1401**

(Representatives Poolman, R. Kelsch, Glassheim)
(Senators Krebsbach, St. Aubyn, Traynor)

SEED CAPITAL INVESTMENT CREDIT

AN ACT to amend and reenact subsection 4 of section 57-38.5-01 of the North Dakota Century Code, relating to the definition of a qualified business for purposes of the seed capital investment tax credit.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 57-38.5-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Qualified business" means a primary sector business that:
 - a. Is incorporated ~~in North Dakota~~ or its satellite operation is incorporated as a for-profit corporation or is a partnership, limited partnership, limited liability company, limited liability partnership, or joint venture;
 - b. Is in compliance with the requirements for filings with the securities commissioner under the securities laws of this state;
 - c. Has North Dakota residents as a majority of its employees in the North Dakota principal office or the North Dakota satellite operation;
 - d. Has its principal office in this state and has the majority of its business activity performed in this state, except sales activity, or has a significant operation in North Dakota that has or is projected to have more than twenty-five employees or two hundred fifty thousand dollars of sales annually; and
 - e. Has a majority of its ownership interests owned by one or more individuals for whom operation of the business is their full-time professional activity;
 - f. ~~Had gross sales receipts of less than two million dollars in its most recently ended taxable year.~~

Approved March 25, 1997
Filed March 26, 1997

CHAPTER 496

HOUSE BILL NO. 1467

(Representatives Mahoney, Kempenich)

COAL SALES AND USE TAX

AN ACT to create and enact a new subsection to section 57-39.2-04 and a new section to chapter 57-61 of the North Dakota Century Code, relating to an exemption for sales of coal used in agricultural processing or sugar beet refining plants and a reduction of the severance tax for coal burned in small boilers; and to amend and reenact sections 57-39.2-02.1, 57-39.2-26.1, and 57-40.2-02.1 of the North Dakota Century Code, relating to the imposition of a sales and use tax on coal and the allocation of sales and use tax revenues from coal.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-39.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-02.1. Sales tax imposed.

1. Except as otherwise expressly provided in ~~subsection~~ subsections 2 and 3 for sales of mobile homes used for residential or business purposes ~~and~~; for sales of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes; and for sales of coal, and except as otherwise expressly provided in this chapter, there is imposed a tax of five percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within ~~the~~ this state ~~of North Dakota~~ of the following to consumers or users:
 - a. Tangible personal property, consisting of goods, wares, or merchandise, except mobile homes used for residential or business purposes and farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes.
 - b. The furnishing or service of communication services or steam other than steam used for processing agricultural products.
 - c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity, and including the furnishing of bingo cards and the playing of any machine for amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.
 - d. Magazines and other periodicals.
 - e. The leasing or renting of a hotel or motel room or tourist court accommodations.

- f. The leasing or renting of tangible personal property the transfer of title to which has not been subjected to a retail sales tax under this chapter or a use tax under chapter 57-40.2.
 - g. Coal used for heating buildings in this state and coal used in agricultural processing or sugar beet refining plants located within this state or adjacent states.
2. There is hereby imposed a tax of three percent upon the gross receipts of retailers from all sales at retail of mobile homes used for residential or business purposes, except as provided in subsection 35 of section 57-39.2-04, and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes, including the leasing or renting of farm machinery and irrigation equipment used exclusively for agricultural purposes within ~~the~~ this state of ~~North Dakota~~ to consumers or users.
 3. There is imposed a tax of six cents per million British thermal units on all sales at retail of coal, except for coal used for heating buildings in this state and coal used in agricultural processing or sugar beet refining plants located within this state or adjacent states.
 4. In the case of a contract for the construction of highways, roads, streets, bridges, and buildings for which the bid was submitted prior to December 9, 1986, the contractor receiving the award is liable only for the sales or use tax at the rate of tax in effect on the date the bid was submitted.

¹⁶ **SECTION 2.** A new subsection to section 57-39.2-04 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

Gross receipts from all sales of coal used in agricultural processing or sugar beet refining plants located within this state or adjacent states which are exempted from the tax imposed by chapter 57-61.

¹⁷ **SECTION 3. AMENDMENT.** Section 57-39.2-26.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-26.1. Allocation of sales, use, and motor vehicle excise tax revenues to revenue sharing and personal property tax replacement and coal development fund.

1. Notwithstanding any other provision of law, a portion of sales, use, and motor vehicle excise tax collections, excluding collections allocated under subsection 2, equal to sixty percent of an amount determined by multiplying the quotient of one percent divided by the general sales tax rate, that was in effect when the taxes were collected, times the net sales, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-40.2, and 57-40.3 must be deposited by the state treasurer in the state

¹⁶ Section 57-39.2-04 was also amended by section 1 of Senate Bill No. 2072, chapter 497.

¹⁷ Section 57-39.2-26.1 was also amended by section 2 of House Bill No. 1019, chapter 19.

aid distribution fund. The state tax commissioner shall certify to the state treasurer the portion of sales, use, and motor vehicle excise tax net revenues that must be deposited in the state aid distribution fund as determined under this section. The state aid distribution fund must be allocated, subject to legislative appropriation, as follows:

4. a. Fifty percent of the revenues must be allocated in the first month subsequent to each quarterly period for state revenue sharing as provided in sections 54-27-20.2 and 54-27-20.3.
2. b. Fifty percent of the revenues must be allocated for personal property tax replacement as provided in section 57-58-01.
2. Notwithstanding any other provision of law, the sales and use tax collections on coal imposed by subsection 3 of section 57-39.2-02.1 and subsection 3 of section 57-40.2-02.1 must be deposited in the coal development fund established under section 57-61-10 and distributed under section 57-62-02.

¹⁸ **SECTION 4. AMENDMENT.** Section 57-40.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-02.1. Use tax imposed.

1. Except as otherwise expressly provided in ~~subsection~~ subsections 2 and 3 for purchases of mobile homes used for residential or business purposes ~~and~~, for purchases of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes, and for purchases of coal used for heating buildings in this state and used in agricultural processing or sugar beet refining plants located within this state or adjacent states, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property purchased at retail for storage, use, or consumption in this state, at the rate of five percent of the purchase price of the property. Except as limited by section 57-40.2-11, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property not originally purchased for storage, use, or consumption in this state at the rate of five percent of the fair market value of the property at the time it was brought into this state.
2. An excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes, except as provided in subsection 19 of section 57-40.2-04, and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes purchased at retail for storage, use, or consumption in this state at the rate of three percent of the purchase price thereof. Except as limited by section 57-40.2-11, and except as provided in subsection 35 of section 57-39.2-04, an excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes and of farm machinery, farm

¹⁸ Section 57-40.2-02.1 was also amended by section 2 of Senate Bill No. 2072, chapter 497.

machinery repair parts, and irrigation equipment used exclusively for agricultural purposes not originally purchased for storage, use, or consumption in this state at the rate of three percent of the fair market value of mobile homes used for residential or business purposes and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes at the time it was brought into this state.

3. An excise tax is imposed on the storage, use, or consumption in this state of coal at the rate of six cents per million British thermal units, except for coal used for heating buildings in this state and coal used in agricultural processing or sugar beet refining plants located within this state or adjacent states.
4. In the case of a contract awarded for the construction of highways, roads, streets, bridges, and buildings prior to December 1, 1986, the contractor receiving the award shall be liable only for the sales or use tax at the rate of tax in effect on the date of contract.

SECTION 5. A new section to chapter 57-61 of the North Dakota Century Code is created and enacted as follows:

Tax reduction for coal burned in small boilers. For coal subject to taxes under this title which is burned in coal-fired boilers within this state or adjacent states in which the generating station has a total capacity of not more than two hundred ten megawatts, after June 30, 1999:

1. The coal is exempt from fifty percent of the taxes imposed under sections 57-61-01, 57-39.2-02.1, and 57-40.2-02.1;
2. The coal is subject to fifteen percent of the taxes imposed under section 57-61-01 and the entire revenue under this subsection must be deposited in the coal development trust fund for use as provided in subsection 1 of section 57-62-02 and allocated to the lignite research fund as provided in subsection 2 of section 57-61-01.5;
3. In addition to the taxes under subsection 2, the coal is subject to thirty-five percent of the severance taxes imposed under section 57-61-01, and an exemption from a portion of the tax imposed by this subsection may be granted by a city, school district, or the board of county commissioners of the county in which the coal is mined. The board of county commissioners, governing body of a city, or school board of a school district, by resolution, may grant to an operator of a mine that supplies coal to such a small coal-fired generating station, a partial or complete exemption from that county's, city's, or school district's share of revenues from the severance tax for all such coal. Any tax revenue from full or partial taxation under this subsection must be allocated as provided in subsection 2 of section 57-62-02, except that a political subdivision that has granted a partial or complete exemption from its share of severance tax revenues must be omitted from the allocation or have its allocation adjusted to reflect the reduction it has granted; and

4. Taxes imposed under section 57-61-01.5 apply to coal subject to this section and must be allocated as provided in that section.

Approved April 4, 1997
Filed April 4, 1997

CHAPTER 497**SENATE BILL NO. 2072**

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

**NATURAL GAS TAX, POLITICAL SUBDIVISION
EXEMPTION, AND SELLER'S CERTIFICATES**

AN ACT to create and enact a new subsection to section 57-40.2-02.1 of the North Dakota Century Code, relating to the imposition of a use tax on natural gas; to amend and reenact subsection 6 of section 57-39.2-04 and section 57-40.3-05 of the North Dakota Century Code, relating to a sales tax exemption for a political subdivision of another state and the requirement for a seller's certificate under the motor vehicle excise tax; and to repeal sections 57-37.1-12, 57-37.1-13, 57-37.1-14, and 57-40.3-05.1 of the North Dakota Century Code, relating to inventory of safety deposit boxes upon the death of the lessor, the notice of transfer of a decedent's assets, penalties for violating the duties of a depository, and the requirement of a seller's certificate under the motor vehicle excise tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁹ **SECTION 1. AMENDMENT.** Subsection 6 of section 57-39.2-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. Gross receipts from all sales otherwise taxable under this chapter made to the United States or to any state, including the state of North Dakota, or any of the subdivisions, departments, agencies, or institutions of any state. A political subdivision of another state is exempt under this subsection only if it is exempt from sales tax in its home state a sale to a North Dakota political subdivision is treated as an exempt sale in that state. The governmental units exempted by this subsection must be issued a certificate of exemption by the commissioner and ~~such~~ the certificate must be presented to each retailer whenever this exemption is claimed.

²⁰ **SECTION 2.** A new subsection to section 57-40.2-02.1 of the North Dakota Century Code is created and enacted as follows:

An excise tax is imposed on the storage, use, or consumption in this state of natural gas consumed by a final user at the rate of four percent from January 1, 1993, through December 31, 1993; three percent from January 1, 1994, through December 31, 1994; and two percent after

¹⁹ Section 57-39.2-04 was also amended by section 2 of House Bill No. 1467, chapter 496.

²⁰ Section 57-40.2-02.1 was also amended by section 4 of House Bill No. 1467, chapter 496.

December 31, 1994, if sales tax has not been applied as provided by section 57-39.2-03.6.

SECTION 3. AMENDMENT. Section 57-40.3-05 of the North Dakota Century Code is amended and reenacted as follows:

57-40.3-05. Purchaser to furnish motor vehicle purchaser's certificate to director of the department of transportation. Any person purchasing a motor vehicle and any person acquiring a motor vehicle by way of gift from a husband or wife, parent or child, or from a brother or sister shall complete a motor vehicle purchaser's certificate in such form and manner as may be prescribed by the director of the department of transportation, showing a complete description of the motor vehicle, the seller's name and address, the buyer's name and address, the full purchase price of the vehicle, trade-in allowance and description of the trade-in, if any, whether the vehicle was the subject of a gift, and any other information that the director of the department of transportation may require. ~~If the motor vehicle was the subject of a sale, the purchaser must, upon request of the department of transportation, also attach to the motor vehicle purchaser's certificate a copy of the seller's certificate required under section 57-40.3-05.1.~~

SECTION 4. REPEAL. Sections 57-37.1-13 and 57-37.1-14 of the North Dakota Century Code and sections 57-37.1-12 and 57-40.3-05.1 of the 1995 Supplement to the North Dakota Century Code are repealed.

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 498

HOUSE BILL NO. 1311

(Representatives Grosz, Rennerfeldt, Schmidt)
(Senator Kringstad)

FUELS TAX REVISIONS

AN ACT to create and enact sections 57-43.2-02.2 and 57-43.2-02.3 of the North Dakota Century Code, relating to special fuels tax refunds and exemptions; to amend and reenact sections 57-43.1-01, 57-43.1-03, 57-43.1-03.1, 57-43.1-04, 57-43.1-05, 57-43.1-06, 57-43.1-07, 57-43.1-11, 57-43.1-17, 57-43.1-20, 57-43.2-01, 57-43.2-02, 57-43.2-03, 57-43.2-04, and 57-43.2-14 of the North Dakota Century Code, relating to motor vehicle fuels and special fuels taxes and administration; to repeal sections 57-43.1-09, 57-43.1-10, and 57-43.1-19 of the North Dakota Century Code, relating to motor vehicle fuels tax refunds and invoices; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-43.1-01 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Agricultural purpose" means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.
2. "Commissioner" means the state tax commissioner.
3. "Consumer" means a user of motor vehicle fuel including any person purchasing motor vehicle fuel in this state for use in a licensed motor vehicle; any person importing motor vehicle fuel into this state or purchasing motor vehicle fuel in this state for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or any person purchasing motor vehicle fuel in this state for use in recreational or any other types of motor vehicles. It does not include a dealer or a retailer importing or purchasing motor vehicle fuel for resale.
2. 4. "Dealer" means any person importing or causing to be imported into this state any motor vehicle fuel for operating or propelling motor vehicles for use, distribution or sale, in and after the fuel reaches this state and any person producing, refining, manufacturing, compounding, or purchasing any motor vehicle fuel in this state for use, distribution, or sale in this state.
3. 5. "Director" means the director of the department of transportation.

4. 6. "Importer for use" means any person importing motor fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property and; having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the importer for use means the lessee or renter unless the commissioner has designated the lessor, renter, or some other person as the importer for use.
7. "Industrial purpose" means:
- a. A manufacturing, warehousing, or loading dock operation;
 - b. Construction;
 - c. Sand and gravel processing;
 - d. Well drilling, well testing, or well servicing;
 - e. Maintenance of business premises, golf courses, or cemeteries;
 - f. A commercial or contract painting operation;
 - g. Electrical services;
 - h. A refrigeration unit on a truck;
 - i. A power-take-off unit; and
 - j. Other similar business activity.
- Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.
8. "Licensed motor vehicle" means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.
9. "Motor vehicle" means a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the motor vehicle fuels defined in this chapter, but does not include aircraft.
5. 10. "Motor vehicle fuels" ~~includes fuel~~ "means" all products commonly or commercially known or sold as gasoline, including casinghead and absorption or natural gasoline, regardless of their classifications or uses, and any liquid which, when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naphtha, kerosene, and similar petroleum products (American society for testing materials designation D-86), shows not less than ten percent distilled

(recovered) below three hundred forty-seven degrees Fahrenheit [175 degrees Celsius] and not less than ninety-five percent distilled (recovered) below four hundred sixty-four degrees Fahrenheit [240 degrees Celsius] but does not include aviation fuel. It includes agriculturally derived alcohol blended with gasoline, used in a pure state, or if blended with another agriculturally derived liquid.

6. ~~"Motor vehicles" means all vehicles, engines, or machines, movable or immovable, which are operated in whole or in part by internal combustion of one or more of the motor vehicle fuels defined in this chapter but does not include aircraft.~~
7. 11. "Original package" means any tank car, barrel, or other package which is in the form and condition in which it was imported into the state or into which motor vehicle fuel refined in this state or imported by pipeline is placed when removed from refinery storage or pipeline terminal storage.
8. 12. "Person" ~~includes~~ means every individual, partnership, society, firm, association, joint stock company, corporation, limited liability company, trustee, executor, administrator, or guardian. Whenever used in any case prescribing and imposing a fine or imprisonment, or both, the term "person" as applied to an association includes the partners or members, as applied to corporations, the officers, and as applied to limited liability companies, the managers.
9. 13. "Public road or highway" ~~or "highway"~~ means every way or place generally open to the use of the public as a matter of right, for the purpose of ~~vehicular~~ motor vehicle travel, notwithstanding that it may be temporarily closed ~~for~~ or subject to restricted travel due to construction, reconstruction, repair, or maintenance.
10. ~~"Use" means the consumption of fuel to propel a motor vehicle upon the public highways.~~
14. "Sale" means the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration, of motor vehicle fuel between dealers or between a dealer and a retailer or a consumer.
44. 15. "Wholesale dealer" ~~means~~ has the same meaning as ~~is stated in subsection 2;~~ "dealer" with the added qualification that it means those selling or delivering motor vehicle fuel to retail dealers.

SECTION 2. AMENDMENT. Section 57-43.1-03 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-03. Refund of tax for fuel used for an industrial purposes purpose - Reduction for agricultural fuel tax fund. Any ~~person~~ consumer who buys or uses any motor vehicle fuel as defined in ~~section 57-43.1-04~~ for an industrial purposes, ~~except motor vehicle fuel used in motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state~~ purpose on which the motor vehicle fuel tax has been paid; ~~must be reimbursed or repaid within the time provided in this chapter;~~ the amount of the tax paid upon the presentation to and the approval of the commissioner of a claim for refund may file a claim with the commissioner for a refund under this chapter. The amount of the tax refund

provided for in this section must be reduced by one-half cent per gallon [3.79 liters], except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users, and the one-half cent per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund.

²¹ **SECTION 3. AMENDMENT.** Section 57-43.1-03.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-03.1. (Effective until December 31, 1999) Refund of tax for fuel used for an agricultural purposes purpose - Reduction for agricultural fuel tax fund. Any ~~person~~ consumer who buys or uses any motor vehicle fuel for an agricultural purposes, ~~except motor vehicle fuel used in motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state~~ purpose on which the motor vehicle fuel tax has been paid; ~~must be reimbursed or repaid within the time provided in this chapter; the amount of the tax paid upon the presentation to and the approval of the commissioner of a claim for refund~~ may file a claim with the commissioner for a refund under this chapter. The amount of the tax refund provided for in this section must be reduced by four cents per gallon [3.79 liters] except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users, two cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund, and two cents per gallon [3.79 liters] withheld from the refund must be retained in the highway tax distribution fund. Those persons who have a valid tax assignment permit issued by the commissioner under section 57-43.1-11 must be charged four cents per gallon [3.79 liters] by the dealer and the four cents charged must be remitted to the commissioner by the dealer when the dealer submits the tax assigned invoices for credit.

(Effective January 1, 2000) Refund of tax for fuel used for an agricultural purposes purpose - Reduction for agricultural fuel tax fund. Any ~~person~~ consumer who buys or uses any motor vehicle fuel for an agricultural purposes, ~~except motor vehicle fuel used in motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state~~ purpose on which the motor vehicle fuel tax has been paid; ~~must be reimbursed or repaid within the time provided in this chapter; the amount of the tax paid upon the presentation to and the approval of the commissioner of a claim for refund~~ may file a claim with the commissioner for a refund under this chapter. The amount of the tax refund provided for in this section must be reduced by two cents per gallon [3.79 liters] except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users, two cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund. Those persons who have a valid tax assignment permit issued by the commissioner under section 57-43.1-11 must be charged two cents per gallon [3.79 liters] by the dealer and the two cents charged must be remitted to the commissioner by the dealer when the dealer submits the tax assigned invoices for credit.

²² **SECTION 4. AMENDMENT.** Section 57-43.1-04 of the North Dakota Century Code is amended and reenacted as follows:

²¹ Section 57-43.1-03.1 was also amended by section 1 of House Bill No. 1286, chapter 500, and section 16 of Senate Bill No. 2019, chapter 48.

²² Section 57-43.1-04 was also amended by section 5 of Senate Bill No. 2071, chapter 54.

57-43.1-04. Form of claim for refund. A refund claim must be on a form furnished by the commissioner and must have a written declaration by the claimant that it is made under the penalties of perjury. The refund claim must state that the motor vehicle fuel was used or is to be used by the claimant other than in a licensed motor vehicles operated or intended to be operated upon the public highways of this state vehicle, the manner in purpose or type of project for which the motor vehicle fuel was used or is to be used, the equipment in which the motor vehicle fuel was used, or in which it will be used, and such other information as the commissioner requires. The original invoice or invoices indicating or sales tickets proving the purchase of motor vehicle fuel on which the refund is claimed must be attached to the refund claim. The invoices or sales tickets must include the dealer's or retailer's name and address, the date the fuel was purchased, the type of product, the number of gallons [liters] of motor vehicle fuel purchased, the state tax as a separate item or a statement that the state tax is included in the price, and the name of the claimant. If the original invoice or invoices or sales tickets are lost, the claimant may substitute duplicate invoices or sales tickets plus a separate affidavit on forms prescribed by the commissioner. A certified history of purchases detailing required information may be accepted by the commissioner in lieu of original sales invoices or sales tickets. A dealer is prohibited from preparing a refund claim for the consumer.

SECTION 5. AMENDMENT. Section 57-43.1-05 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-05. Claim for refund - Limitation on filing. A refund claim must be filed, for all motor vehicle fuel purchases during a calendar year, on or after January first and before July first of the next year following the year during which the purchase was made, or the claim for refund is barred unless the commissioner grants an extension of time for cause. However, any claim for refund may be filed in the calendar year of motor vehicle fuel purchase when:

1. The business is being discontinued;
2. No further purchases subject to fuel tax refund will be made in the remainder of the calendar year; or
3. The claim for refund exceeds ~~one thousand~~ four hundred dollars.

No claim for refund may be made or approved unless the amount of the claim is in excess of five dollars.

SECTION 6. AMENDMENT. Section 57-43.1-06 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-06. Refund to prevent ~~double~~ taxation - ~~Reduction for agricultural fuel tax fund by multiple jurisdictions.~~ Any person to whom special fuel or motor vehicle fuel is sold on which the tax imposed by this chapter or chapter 57-43.2 has been paid who thereafter removes the fuel from this state for sale or resale in another state or to a state which requires payment of a tax upon the use of the fuel in that state must be granted a refund of the tax that was paid pursuant to this chapter or chapter 57-43.2. The refund may be granted only upon application to the commissioner on forms in the manner prescribed by the commissioner; including and must include proof that fuel for sale or resale in another state was reported to the taxing agency of that state, or in the case of a consumer, proof of payment of the tax imposed by the other state; and is subject to the limitations provided in section 57-43.1-05. The tax provided for in section 57-43.2-03 may not be levied on sales of any such fuel for which a refund of tax is made pursuant to this section. The refund

may not be reduced by the one cent per gallon tax designated for the township highway aid fund. A claim for refund under this section must be made within one year from the date the fuel was removed to another state for sale, resale, or use in another state.

SECTION 7. AMENDMENT. Section 57-43.1-07 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-07. Commissioner to ~~audit and approve claim~~ - ~~Investigation of doubtful claims~~ - ~~Payment of examine and pay claims.~~ The ~~Within thirty days of the receipt of a claim for a refund of tax, the commissioner, upon the presentation of a sworn claim, shall audit examine the claim for refund and if there are no apparent discrepancies, shall prepare, in duplicate, an abstract showing the claim number and the name, address, and the amount due each claimant. The commissioner shall approve and submit claims for payment within thirty days of receipt in the commissioner's office unless the commissioner is in doubt as to the validity of any claim, in which case the commissioner may withhold approval for a reasonable time for purposes of investigation. The commissioner may authorize any employee or agent of his office to investigate doubtful claims and report the findings to the commissioner who shall then promptly approve or reject the claim as the facts may warrant.~~ All claims approved by the commissioner must be paid by warrant-checks prepared by the office of management and budget. The state treasurer is not required to retain the canceled checks by which any refund may have been paid for a period of more than six years from July first of the fiscal year in which the refund check is issued.

SECTION 8. AMENDMENT. Section 57-43.1-11 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-11. Assignment of refund claims. ~~Any person~~ consumer eligible for a motor vehicle fuel tax refund under this chapter, who has been sold the fuel by a ~~seller~~ dealer on open account with the ~~seller~~ dealer paying the ~~refundable~~ motor vehicle fuel tax, may assign ~~to the seller the claim for the refund to the dealer~~ by attaching ~~the an~~ an assignment agreement, on a form prescribed by the commissioner, to the refund claim ~~form to be submitted by the claimant in accordance with section 57-43.1-04. Where~~ If an assignment of ~~claim a refund~~ claim a refund is made, ~~and the claim is allowed under the provisions of this chapter,~~ the refund check or warrant issued must be made payable to both the claimant and ~~his~~ the assignee.

SECTION 9. AMENDMENT. Section 57-43.1-17 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-17. Commissioner to audit statement and assess tax.

1. Except as otherwise provided in this section, the commissioner may proceed to audit the ~~statements~~ returns of dealers and, not later than three years after the due date of a ~~statement return~~, or three years after the ~~statement return~~ was filed, whichever period expires later, assess ~~the additional tax and, if due or issue a tax credit or refund.~~ If any additional tax is found due or if a tax credit applies, the commissioner shall notify the dealer in detail of the reason for the increase or decrease.
2. If it is determined upon audit that the tax due was twenty-five percent or more above the amount reported on a return, the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without such assessment, at any time within six years after the due date

of the statement, or six years after the statement was filed, whichever period expires later.

3. Except as otherwise provided in this chapter, the commissioner may audit any consumer's claim for a refund of tax, and, not later than three years after the due date of the claim or three years after the claim was filed, whichever period expires later, assess additional tax or issue an additional refund. If additional tax is found due or if an additional tax refund applies, the commissioner shall notify the claimant in detail of the reason for the increase or decrease. For any claim selected for audit, the claimant shall provide additional verification as required by the commissioner of fuel purchases, payment of the tax, use of the fuel for a purpose entitling the claimant to a refund, and use of the fuel other than in a licensed motor vehicle.
4. If false or fraudulent information is given in a ~~statement~~ dealer's tax return or in a claim for refund, or if the failure by a dealer to file a ~~statement~~ tax return is due to the fraudulent intent or the willful attempt of the dealer in any manner to evade the tax, the time limitations in this section do not apply, and the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without such assessment, at any time.
4. 5. If, before the expiration of the time prescribed in ~~subsections 4 and 2~~ this chapter for the assessment of tax, the commissioner and the dealer or the claimant consent in writing to an extension of time for the assessment of the tax, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period ~~se~~ agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.
6. A determination of additional tax due issued to a dealer or to a consumer fixes the tax finally and irrevocably unless the dealer or consumer against whom it is assessed, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the commissioner and in the manner provided in chapter 28-32.
7. A determination that a claim for a tax credit or refund is disallowed becomes finally and irrevocably fixed unless the dealer or consumer claiming the refund, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the commissioner and in the manner provided in chapter 28-32.

SECTION 10. AMENDMENT. Section 57-43.1-20 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-20. Tax chargeable to consumer. Every dealer required to collect remit the motor vehicle fuel tax imposed by this chapter shall charge and collect the tax on all motor vehicle fuel sold by that dealer, except as provided in section ~~57-43.1-18~~, pass the tax on to the consumer as a part of the selling price of the fuel.

SECTION 11. AMENDMENT. Section 57-43.2-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Agricultural purpose" means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.
2. "Commissioner" means the state tax commissioner.
3. "Consumer" means a user of special fuel including any person purchasing special fuel in this state for use in a licensed motor vehicle; any person importing special fuel into this state or purchasing special fuel in this state for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or any person purchasing special fuel in this state for use in recreational or any other types of motor vehicles. It does not include a dealer or a retailer importing or purchasing special fuel for resale.
4. "Dealer" means any special fuel dealer, special fuel wholesaler, or wholesale dealer of liquefied petroleum gas.
2. 5. "Director" means the director of the department of transportation.
3. ~~"Farm to market roads" means any road within the county which is not on the North Dakota state highway system and which qualifies for federal aid matching funds.~~
6. "Heating fuel use" means use of special fuel to heat homes, private and public office buildings, or private and public commercial buildings or use of special fuel in stoves or burners or for any other heating purposes.
4. ~~"Highway" means every way or place generally open to the use of the public for the purpose of vehicular travel notwithstanding that it may be temporarily closed or travel thereon restricted for the purpose of construction, maintenance, repair, or reconstruction.~~
5. 7. "Highway purposes purpose" means any use of special fuels fuel in any motor vehicle or in any phase of construction, reconstruction, repair, or maintenance of farm-to-market roads as defined in subsection 3 and of public roads or highways as defined in subsection 4, but does not include that special fuel used for heating of oils, gravel, bituminous mixture, or in any equipment used in the preparation of any materials to be used on any type of road or highway surfacing.
6. 8. "Importer for use" means any person importing fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property; and having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or

rented, the importer for use means the lessee or renter unless the commissioner has designated the lessor, renter, or some other person as the importer for use.

9. "Industrial purpose" means:

- a. A manufacturing, warehousing, or loading dock operation;
- b. Construction;
- c. Sand and gravel processing;
- d. Well drilling, well testing, or well servicing;
- e. Maintenance of business premises, golf courses, or cemeteries;
- f. A commercial or contract painting operation;
- g. Electrical services;
- h. A refrigeration unit on a truck;
- i. A power-take-off unit; and
- j. Other similar business activity.

Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.

10. "Kerosene" means a light flammable hydrocarbon fuel or solvent which, for special fuel purposes, is used as heating fuel.

11. "Licensed motor vehicle" means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.

7. 12. "Motor vehicle" means any a vehicle propelled by an internal combustion engine and licensed for operation or operated upon the highways, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the special fuels defined in this chapter but does not include aircraft.

8. 13. "Person" includes means every natural person, fiduciary, association, corporation, or limited liability company. Whenever used in any cause prescribing and imposing a fine or imprisonment, or both, the term "person" as applied to an association means and includes the partners or members thereof, as applied to corporations, the officers thereof, and as applied to limited liability companies, the managers thereof.

14. "Public road or highway" means every way or place generally open to the use of the public as a matter of right, for the purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or

subject to restricted travel due to construction, reconstruction, repair, or maintenance.

15. "Railroad purpose" means the operation of railroad locomotives and the construction, reconstruction, repair, and maintenance of railroads. Fuel used for a railroad purpose includes fuel used to operate a railroad locomotive, and fuel used in a motor vehicle for purposes of construction, reconstruction, repair, and maintenance of railroads. It does not include fuel used in a licensed motor vehicle.
- 9: 16. "Sale" means the receipt, delivery, or transfer of title to or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration, of special fuels by a between special fuel dealer to dealers or between a special fuel user dealer and a retailer or a consumer.
- 40: 17. "Special fuel" means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles and includes compressed natural gas, all gases and liquids which meet the specifications as determined by the state department of health pursuant to the provisions of section 19-10-10, as well as all liquids determined by the state department of health to be heating oil pursuant to the provisions of section 19-10-10, and agriculturally derived alcohol if used in a pure state or if blended with another agriculturally derived liquid, except that it does not include either motor vehicle fuels as defined in section 57-43.1-01 or antifreeze as defined by section 19-16.1-02.
- 44: 18. "Special fuel dealer" means any person in the business of handling special fuel who delivers or sells any special fuel to a special fuel user.
- 42: "Special fuel user" means any person receiving or purchasing special fuel and includes fuel to be used for heating, agricultural, or railroad purposes or for industrial purposes other than in the performance of a contract with any unit of government but does not include a special fuels dealer purchasing or receiving special fuel for resale.
- 43: 19. "Special fuel wholesaler" means any person who produces, refines, manufactures, blends, or compounds special fuel, or who imports or exports special fuel, other than in the fuel supply tank of a motor vehicle, for distribution to a special fuel dealer for sale and use.
- 44: "Use" means the consumption of fuel to propel a motor vehicle upon the public highways.
- 45: 20. "Wholesale dealer of liquefied petroleum gas" means any person who delivers or sells that fuel known as liquefied petroleum gas, commonly called "propane" or "butane", to any retail dealer, or user of liquefied petroleum gas.

²³ **SECTION 12. AMENDMENT.** Section 57-43.2-02 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-02. Tax imposed - Exemptions.

1. ~~An~~ Except as otherwise provided in this chapter, an excise tax of seventeen cents per gallon [3.79 liters] is imposed on the sale or delivery of special fuel to any special fuel user, except that special fuel to be used for heating, agricultural, or railroad purposes or for industrial purposes other than in the performance of a contract with any unit of government is exempt from the tax imposed by this chapter, provided that the sale or delivery of special fuel for use in a motor vehicle is not exempt consumer. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel.
2. ~~The tax attaches at the time of sale, delivery, or transfer of title of such special fuel to a special fuel user or unlicensed dealer. The special fuel dealer shall collect the tax from the special fuel user and pay the tax to the commissioner as provided in this chapter. The dealer shall remit the tax imposed by this section on all sales to consumers.~~
3. ~~Except as prohibited by section 57-43.1-09 the tax is refundable when used for nonhighway purposes, and the provisions and procedures of chapter 57-43.1 relating to the refund of motor fuel taxes apply to the tax imposed by this chapter, provided that the amount refunded for any special fuel does not include the amount of tax imposed by section 57-43.2-03 on the sale of that fuel. The dealer may make sales of special fuel to another dealer free of the tax imposed by this chapter.~~

SECTION 13. Section 57-43.2-02.2 of the North Dakota Century Code is created and enacted as follows:

57-43.2-02.2. Refund of tax for fuel used for heating and for an agricultural, industrial, or railroad purpose. Any consumer who purchases or uses any special fuel for heating or for an agricultural, industrial, or railroad purpose, except special fuel used to operate a licensed motor vehicle, on which the special fuel tax imposed by section 57-43.2-02 has been paid, may file a claim with the commissioner for a refund pursuant to chapter 57-43.1.

SECTION 14. Section 57-43.2-02.3 of the North Dakota Century Code is created and enacted as follows:

57-43.2-02.3. Exemptions.

1. Special fuel commonly known as diesel fuel which is dyed for federal fuel tax exemption purposes and sold for use as heating fuel or for an agricultural, industrial, or railroad purpose is exempt from the special fuel tax imposed by section 57-43.2-02 at the time the fuel is sold to the

²³ Section 57-43.2-02 was also amended by section 2 of House Bill No. 1163, chapter 499.

consumer and is subject instead to the tax imposed by section 57-43.2-03. Fuel purchased for use in a licensed motor vehicle is not exempt from the tax imposed by section 57-43.2-02.

2. Special fuel, other than diesel fuel, sold for use as heating fuel or for an agricultural, industrial, or railroad purpose is exempt from the special fuel tax imposed by section 57-43.2-02 at the time the fuel is sold to the consumer and is subject instead to the tax imposed by section 57-43.2-03. Fuel purchased for use in a licensed motor vehicle is not exempt from the tax imposed by section 57-43.2-02.
3. A consumer purchasing special fuel for a use in which it becomes an ingredient or a component part of tangible personal property intended to be sold ultimately at retail is exempt from the tax imposed by section 57-43.2-02 and is not subject to the tax imposed by section 57-43.2-03.

SECTION 15. AMENDMENT. Section 57-43.2-03 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-03. ~~Tax~~ Special excise tax levied. A

1. Except as otherwise provided in this chapter, a special excise tax of two percent is imposed on all sales of special fuels, which are exempted from the tax imposed under section 57-43.2-02, if the special fuels are sold to a special fuels user in this state, and the same rate of tax is imposed if the special fuel is imported for use in this state by a special fuels user. The rate applies to the sale price of the special fuels less any discounts for any purposes allowed and taken on the sales.
2. The tax levied under this section does not apply to state or political subdivisions when that fuel is used for purposes set forth in section ~~57-43.1-08~~. The special excise tax applies to all sales of special fuels taxed under section 57-43.2-02 for which taxes are later refunded to a special fuels user. For purposes of this section, "use" means the consumption of fuel for heating, agricultural, or railroad purposes, or for industrial purposes other than in the performance of a contract with any unit of government any consumer.
3. A consumer importing special fuel into this state, for a purpose for which the special fuel is taxable under this section, is liable for the tax. The commissioner shall collect the tax from the consumer importing the fuel.
4. If any fuel subject to tax by this section was subject to tax in any other state or its political subdivisions, the tax in this section applies but at a rate measured by the difference between the rate imposed in this section and the rate imposed by the other state or its political subdivisions. If the tax imposed by the other state or its political subdivisions is the same or greater than the tax imposed by this section, no tax is due.
5. An invoice, sales ticket, or other sales document issued or created covering a sale taxable under this section must identify the consumer to whom the sale was made, specify the purpose for which the special fuel was sold, and specify whether the fuel was dyed for tax exemption purposes.

6. The dealer shall remit the tax imposed by this section on all sales to a consumer.

SECTION 16. AMENDMENT. Section 57-43.2-04 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-04. ~~Collection and payment of tax~~ Tax chargeable to consumer. ~~The tax imposed by section 57-43.2-03 attaches at the time of sale of any special fuel by a special fuel dealer to a special fuel user. The tax imposed by section 57-43.2-03 on special fuels imported for use in this state attaches when the fuel is used in this state. The special fuel dealer shall collect the tax from the special fuel user and pay the tax to the commissioner as provided in this chapter. If the tax imposed by section 57-43.2-02 was paid by a special fuels user and the special fuel was used for an exempt purpose, the tax must be refunded by the tax commissioner and the tax imposed by section 57-43.2-03 must be deducted from the refund. The tax imposed by section 57-43.2-03 on special fuels imported for use in the state by a special fuels user will be collected directly by the tax commissioner. Every dealer required to remit the special fuel tax imposed by sections 57-43.2-02 and 57-43.2-03 shall pass the tax on to the consumer.~~

SECTION 17. AMENDMENT. Section 57-43.2-14 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-14. Commissioner to audit returns and assess tax.

1. ~~Except as otherwise provided in this section, the commissioner may proceed to audit the returns of special fuel dealers and purchase records of special fuel users and, not later than three years after the due date of the return, or three years after the return was filed, whichever period expires later, or three years after purchase by a special fuel user, assess the additional tax and, if due or issue a tax credit or refund. If any additional tax is found due or if a tax credit applies, the commissioner shall notify the taxpayer in detail of the reason for the increase or decrease.~~
2. If it is determined upon audit that the tax due was twenty-five percent or more above the amount reported on a return, the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without such assessment, at any time within six years after the due date of the return, or six years after the return was filed, whichever period expires later.
3. ~~Except as otherwise provided in this chapter, the commissioner may audit any consumer's claim for refund and, not later than three years after the due date of a claim or three years after the claim was filed, whichever period expires later, assess additional tax or issue an additional refund. If additional tax is found due or if an additional tax refund applies, the commissioner shall notify the claimant in detail of the reason for the increase or decrease. For any claim selected for audit, the claimant shall provide additional verification as required by the commissioner of fuel purchases, payment of the tax, use of the fuel for a purpose entitling the claimant to a refund, and use of the fuel other than in a licensed motor vehicle.~~
4. If false or fraudulent information is given in ~~the~~ a dealer's tax return or in a consumer's claim for refund, or if the failure by a dealer to file a tax

return is due to the fraudulent intent or the willful attempt of the ~~taxpayer~~ dealer in any manner to evade the tax, the time limitations in this section do not apply, and the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without the assessment, at any time.

- ~~4.~~ 5. If before the expiration of the time prescribed in ~~subsections 4 and 2~~ this chapter for the assessment of tax, the commissioner and the ~~taxpayer~~ dealer or claimant consent in writing to an extension of time for the assessment of the tax, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period ~~se~~ agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.
6. A determination of additional tax due issued to a dealer or to a consumer fixes the tax finally and irrevocably unless the dealer or consumer against whom it is assessed, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the commissioner and in the manner provided in chapter 28-32.
7. A determination that a claim for a tax credit or refund is disallowed becomes finally and irrevocably fixed unless the dealer or consumer claiming the refund, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the commissioner and in the manner provided in chapter 28-32.

SECTION 18. REPEAL. Sections 57-43.1-09, 57-43.1-10, and 57-43.1-19 of the North Dakota Century Code are repealed.

SECTION 19. EFFECTIVE DATE. This Act is effective for taxable events occurring after March 31, 1997.

SECTION 20. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 1, 1997
Filed April 1, 1997

CHAPTER 499

HOUSE BILL NO. 1163

(Finance and Taxation Committee)

(At the request of the Department of Transportation)

MOTOR VEHICLE AND SPECIAL FUELS TAXES

AN ACT to amend and reenact sections 57-43.1-02 and 57-43.2-02 of the North Dakota Century Code, relating to motor vehicle fuel and special fuel taxes; to repeal sections 57-43.1-02.1 and 57-43.2-02.1 of the North Dakota Century Code, relating to additional motor vehicle fuel and special fuel taxes; to provide an appropriation; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-43.1-02 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-02. Tax imposed on motor vehicle fuels.

1. Except as otherwise provided in this section, a tax of ~~seventeen~~ twenty cents per gallon [3.79 liters] is imposed on all motor vehicle fuel sold or used in this state.
2. The dealer shall collect the tax imposed by this section from the consumer on all sales.
3. Sales of fuel in the original package may be made to a licensed dealer, and the dealer may collect the tax imposed by this chapter, but on sales in the original package to persons other than licensed dealers, the dealer is liable for the tax.

²⁴ **SECTION 2. AMENDMENT.** Section 57-43.2-02 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-02. Tax imposed - Exemptions.

1. An excise tax of ~~seventeen~~ twenty cents per gallon [3.79 liters] is imposed on the sale or delivery of special fuel to any special fuel user, except that special fuel to be used for heating, agricultural, or railroad purposes or for industrial purposes other than in the performance of a contract with any unit of government is exempt from the tax imposed by this chapter, provided that the sale or delivery of special fuel for use in a motor vehicle is not exempt. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet

²⁴ Section 57-43.2-02 was also amended by section 12 of House Bill No. 1311, chapter 498.

[3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel.

2. The tax attaches at the time of sale, delivery, or transfer of title of ~~such~~ the special fuel to a special fuel user or unlicensed dealer. The special fuel dealer shall collect the tax from the special fuel user and pay the tax to the commissioner as provided in this chapter.
3. Except as prohibited by section 57-43.1-09 the tax is refundable when used for nonhighway purposes, and the provisions and procedures of chapter 57-43.1 relating to the refund of motor fuel taxes apply to the tax imposed by this chapter, provided that the amount refunded for any special fuel does not include the amount of tax imposed by section 57-43.2-03 on the sale of that fuel.

SECTION 3. REPEAL. Sections 57-43.1-02.1 and 57-43.2-02.1 of the 1995 Supplement to the North Dakota Century Code are repealed.

SECTION 4. APPROPRIATION. There is hereby appropriated out of any moneys in the state highway tax distribution fund in the state treasury the entire state's share of revenue from the additional tax imposed by sections 1 and 2 of this Act, but not exceeding \$12,200,000, or so much of the sum as may be necessary, to the department of transportation for highway purposes for the biennium beginning July 1, 1997, and ending June 30, 1999.

SECTION 5. EFFECTIVE DATE - EXPIRATION DATE. Sections 1, 2, and 3 of this Act are effective for sales or delivery of motor vehicle or special fuels after June 30, 1997. Sections 1 and 2 of this Act are effective through December 31, 1999, and are thereafter ineffective.

Approved April 8, 1997
Filed April 8, 1997

CHAPTER 500

HOUSE BILL NO. 1286

(Representatives Brown, Rennerfeldt, Schmidt)
(Senator Kringstad)

FUEL TAX REFUND ASSIGNMENTS

AN ACT to amend and reenact section 57-43.1-03.1 of the North Dakota Century Code, relating to assignment of motor vehicle fuel tax refunds; to repeal section 57-43.1-12 of the North Dakota Century Code, relating to assignment of motor vehicle fuel tax refunds; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁵ **SECTION 1. AMENDMENT.** Section 57-43.1-03.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-03.1. (Effective until December 31, 1999) Refund of tax for fuel used for agricultural purposes - Reduction for agricultural fuel tax fund. Any ~~person~~ consumer who buys or uses any motor vehicle fuel for an agricultural purposes, ~~except motor vehicle fuel used in motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state purpose on which the motor vehicle fuel tax has been paid; must be reimbursed or repaid within the time provided in this chapter, the amount of the tax paid upon the presentation to and the approval of the commissioner of a claim for refund may file a claim with the commissioner for a refund under this chapter.~~ The amount of the tax refund provided for in under this section must be reduced by four cents per gallon [3.79 liters] except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users, two cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund, and two cents per gallon [3.79 liters] withheld from the refund must be retained in the highway tax distribution fund. Those persons who have a valid tax assignment permit issued by the commissioner under section 57-43.1-11 must be charged four cents per gallon [3.79 liters] by the dealer and the four cents charged must be remitted to the commissioner by the dealer when the dealer submits the tax assigned invoices for credit.

(Effective January 1, 2000) Refund of tax for fuel used for agricultural purposes - Reduction for agricultural fuel tax fund. Any ~~person~~ consumer who buys or uses any motor vehicle fuel for an agricultural purposes, ~~except motor vehicle fuel used in motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state purpose on which the motor vehicle fuel tax has been paid; must be reimbursed or repaid within the time provided in this chapter, the amount of the tax paid upon the presentation to and the approval of the commissioner of a claim for refund may file a claim with the commissioner for a refund under this chapter.~~ The amount of the tax refund provided for in under this section must be reduced by two cents per gallon [3.79 liters] except for those fuels

²⁵ Section 57-43.1-03.1 was also amended by section 3 of House Bill No. 1311, chapter 498, and section 16 of Senate Bill No. 2019, chapter 48.

used in aircraft or with respect to refunds claimed by aircraft fuel users, and two cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund. ~~Those persons who have a valid tax assignment permit issued by the commissioner under section 57-43.1-11 must be charged two cents per gallon [3.79 liters] by the dealer and the two cents charged must be remitted to the commissioner by the dealer when the dealer submits the tax assigned invoices for credit.~~

SECTION 2. REPEAL. Section 57-43.1-12 of the North Dakota Century Code is repealed.

SECTION 3. EFFECTIVE DATE. This Act is effective for refund claims for motor vehicle fuel tax purchases made after March 31, 1997.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 23, 1997
Filed March 24, 1997

CHAPTER 501

SENATE BILL NO. 2155

(Senators Urlacher, Goetz)
(Representatives Skarphol, Wardner)

WELL PRODUCTION REPORT FILING

AN ACT to amend and reenact subsections 1 and 2 of section 57-51-06 of the North Dakota Century Code, relating to the filing of well production reports by electronic media and waiver of the requirement to file producer's reports.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁶ **SECTION 1. AMENDMENT.** Subsections 1 and 2 of section 57-51-06 of the North Dakota Century Code are amended and reenacted as follows:

1. The tax herein provided for must be paid to the commissioner and the person paying the tax shall file with the commissioner at the time the tax is required to be paid, a statement, under oath, on forms prescribed by the commissioner. The commissioner may require a purchaser to file the statement or report by electronic data interchange or other electronic media.
2. Any person engaged in the production, within this state, of oil shall on or before the twenty-fifth day of the next succeeding month after production, and any person engaged in the production of gas within this state shall, on or before the fifteenth of the second succeeding month after production, file with the commissioner a statement under oath upon forms prescribed by the commissioner. The commissioner may waive the requirement that a producer file a well production report. A waiver by the commissioner of the requirement to file a well production report does not release the producer from any obligation to remit the tax under this chapter. A waiver does not release the producer from any duty or obligation under section 57-51-07 to maintain production records for inspection by the commissioner.

Approved March 6, 1997
Filed March 6, 1997

²⁶ Section 57-51-06 was also amended by section 8 of Senate Bill No. 2071, chapter 54.

CHAPTER 502

SENATE BILL NO. 2156

(Senators Urlacher, Goetz)
(Representatives Skarphol, Wardner)

OIL AND GAS RETURN AUDIT PERIOD

AN ACT to amend and reenact section 57-51-09 of the North Dakota Century Code, relating to the time allowed for assessment of gross production and oil extraction tax and the audit of returns.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-51-09 of the North Dakota Century Code is amended and reenacted as follows:

57-51-09. Commissioner shall compute tax on incorrect returns.

1. The commissioner ~~has the power and authority to~~ may ascertain and determine whether ~~or not any a~~ return ~~herein~~ required to be filed with the commissioner is a true and correct return of the gross products, and of the value thereof, of that person; ~~and if.~~ If any person has made an untrue or incorrect return of the gross production or value thereof, as hereinbefore required, or has failed or refused to make a return, the commissioner shall under rules ~~and regulations prescribed~~ adopted by the commissioner, ascertain the correct amount of either, and compute the tax.
2. For taxable periods beginning before January 1, 1991, the tax commissioner has six years after the due date of the original return or six years after the original return is filed, whichever period expires later, to assess additional tax found due. For taxable periods beginning after December 31, 1990, and before January 1, 1993, the time to assess is five years. For taxable periods beginning after December 31, 1992, and before January 1, 1995, the time to assess is four years. Effective for taxable periods beginning after December 31, 1994, the time to assess is three years after the due date of the original return or three years after the original return is filed, whichever period expires later. However, if there is a change in tax liability on any return by an amount in excess of twenty-five percent of the amount of tax liability reported on a return, any additional tax determined to be due may be assessed any time within six years after the due date of the return or six years after the return was filed, whichever period expired later.
3. If a taxpayer files an amended return, the tax commissioner has two years after the return is filed to audit the return and assess any additional tax attributable to the changes or corrections even though other time periods prescribed in this section for the assessment of tax may have expired. The provisions of this section do not limit or restrict any other time period prescribed in this section for the assessment of tax that has not expired as of the end of the two-year period prescribed in this section.

4. For periods in which the tax commissioner has waived the requirement that a producer file a well production report required under section 57-51-06, the tax commissioner has three years after the due date of the purchaser's return or three years after the purchaser's return is filed, whichever period expires later, to assess the producer for additional tax found due. However, if there is a change in tax liability on the purchaser's return by an amount in excess of twenty-five percent of the amount of tax liability reported on a purchaser's return, any additional tax determined to be due may be assessed from the producer any time within six years after the due date of the purchaser's return or six years after the purchaser's return was filed, whichever period expires later.
5. Any person who consents to an extension of time for assessment of tax must be presumed to have consented to a similar extension for refund.

Approved March 6, 1997
Filed March 6, 1997

CHAPTER 503

HOUSE BILL NO. 1256

(Representative Wardner)
(Senator Urlacher)

OIL AND GAS TAXES AND LIENS

AN ACT to amend and reenact section 57-51-11 of the North Dakota Century Code, relating to oil and gas gross production and oil extraction tax, liens, penalty, and interest.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-51-11 of the North Dakota Century Code is amended and reenacted as follows:

57-51-11. Lien for tax - Preservation of lien - Satisfaction of lien.

1. The tax herein referred to, penalty, and interest provided for in this chapter is, at all times, and constitutes a first and paramount lien against the purchaser's or producer's property as the case may be, both real and personal; and the. The provisions hereof, of this chapter making the purchaser liable to pay such the tax; and the provisions requiring the producer to pay the royalty owner's tax, in no way releases do not release the producer or purchaser from that liability to pay same, in all cases where such. If the tax, penalty, and interest is not paid, and it may be recovered at the suit of the state, upon relation to the commissioner, in any court of competent jurisdiction of the county where any such property, assets, and effects are located.
2. Any judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in this state, prior to the commissioner filing in the central notice system maintained by the secretary of state, a notice of the lien provided for in this section, takes free of, or has priority over, the lien. The commissioner shall index in the central notice system the following data:
 - a. The name of the taxpayer.
 - b. The tax identification number or social security number of the taxpayer.
 - c. The name "State of North Dakota" as claimant.
 - d. The date and time the notice of lien was indexed.
 - e. The amount of the lien.

The notice of lien is effective as of eight a.m. of the first day following the indexing of the notice. A notice of lien filed by the commissioner with a register of deeds before the effective date of this Act, may be indexed in the central notice system without changing its original priority as to property in the county where the lien was filed.

3. Upon the payment of tax, penalty, and interest, if applicable, or a penalty assessed under section 57-51-06, as to which the commissioner has indexed a notice in the central notice system, the commissioner shall index a satisfaction of the lien in the central notice system.
4. The commissioner is exempt from the payment of the fees otherwise provided for by law for the indexing of the lien or satisfaction.

Approved March 26, 1997

Filed March 27, 1997

CHAPTER 504**SENATE BILL NO. 2371**

(Senators Kinnoin, Urlacher, Yockim)
(Representatives Nichols, Rennerfeldt, Skarphol)

TRIBAL LANDS OIL TAX EXEMPTION

AN ACT to create and enact a new subsection to section 57-51.1-03 of the North Dakota Century Code, relating to an oil extraction tax exemption for initial production from wells on tribal trust lands; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-51.1-03 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

The initial production of oil from a well is exempt from any taxes imposed under this chapter for a period of sixty months if:

- a. The well is located within the boundaries of an Indian reservation;
- b. The well is drilled and completed on lands held in trust by the United States for an Indian tribe or individual Indian; or
- c. The well is drilled and completed on lands held by an Indian tribe if the interest is in existence on the effective date of this Act.

SECTION 2. EFFECTIVE DATE. This Act is effective for production from wells drilled and completed after July 31, 1997.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 505**SENATE BILL NO. 2366**
(Senator Goetz)**OIL TAX TRUST FUND**

AN ACT to provide for deposit of certain oil extraction and oil and gas gross production tax excess revenues into a permanent oil tax trust fund and deposit of interest earned on the fund to the general fund; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Permanent oil tax trust fund - Deposits - Interest - Adjustment of distribution formula. At the end of any biennium beginning after June 30, 1997, all revenue deposited in the general fund during that biennium and derived from taxes imposed on oil and gas under chapters 57-51 and 57-51.1 which exceeds sixty-two million dollars must be transferred by the state treasurer to a special fund in the state treasury known as the permanent oil tax trust fund. At the end of the 1995-97 biennium all revenue deposited in the general fund during that biennium and derived from taxes imposed on oil and gas under chapters 57-51 and 57-51.1 which exceeds fifty-six million three hundred thousand dollars must be transferred by the state treasurer to a special fund in the state treasury known as the permanent oil tax trust fund. The state treasurer shall transfer interest earnings of the permanent oil tax trust fund to the general fund at the end of each fiscal year. The principal of the permanent oil tax trust fund may not be expended except upon a two-thirds vote of the members elected to each house of the legislative assembly.

If the distribution formulas under chapter 57-51 or 57-51.1 are amended effective after June 30, 1997, the director of the budget shall adjust the sixty-two million dollar amount in this section by the same percentage increase or decrease in the amount of revenue allocable to the general fund after the change in the allocation formula, and transfers to the permanent oil tax trust fund shall thereafter be made using that adjusted figure so that the dollar amount of the transfers to the permanent oil tax trust fund is not increased or decreased merely because of changes in the distribution formulas.

Notwithstanding section 54-27.2-02, the state treasurer shall make the transfers required by this section before calculating any general fund revenue balance available for transfer to the budget stabilization fund under chapter 54-27.2. In this section, "at the end of any biennium" has the same meaning as in section 54-27.2-02.

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

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 506**SENATE BILL NO. 2196**

(Senators Goetz, O'Connell)
(Representatives Belter, Mahoney)

**CARBON DIOXIDE COAL CONVERSION TAX
EXEMPTION**

AN ACT to amend and reenact subsection 7 of section 57-60-01 of the North Dakota Century Code, relating to the definition of gross receipts under the privilege tax on coal conversion facilities; to provide for retroactive application; to provide an effective date; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 57-60-01 of the North Dakota Century Code is amended and reenacted as follows:

7. "Gross receipts" means all revenue valued in money, whether received in money or otherwise, derived by a coal conversion facility subject to the provisions of this chapter from the production of products of a coal conversion facility, but not including any revenue derived from transportation, transmission, distribution, or other events which occur after completion of the process of production of the products of the facility. For the purpose of computing the tax imposed by this chapter, "gross receipts" does not include ~~any~~:
 - a. Any financial assistance, whether in the form of price guarantee payments or otherwise, provided by the federal government or any agency of the federal government ~~nor does it include any~~;
 - b. Any revenue derived from the sale of byproducts as herein defined to a maximum of ~~twenty~~ thirty-five percent of the gross receipts as defined in this subsection; or
 - c. Any revenue derived from the sale and transportation of carbon dioxide for use in the enhanced recovery of oil or natural gas.

SECTION 2. AMENDMENT. Subsection 7 of section 57-60-01 of the North Dakota Century Code is amended and reenacted as follows:

7. "Gross receipts" means all revenue valued in money, whether received in money or otherwise, derived by a coal conversion facility subject to the provisions of this chapter from the production of products of a coal conversion facility, but not including any revenue derived from transportation, transmission, distribution, or other events which occur after completion of the process of production of the products of the facility. For the purpose of computing the tax imposed by this chapter, "gross receipts" does not include ~~any~~:

- a. Any financial assistance, whether in the form of price guarantee payments or otherwise, provided by the federal government or any agency of the federal government ~~nor does it include any~~;
- b. Any revenue derived from the sale of byproducts as herein defined to a maximum of twenty percent of the gross receipts as defined in this subsection; or
- c. Any revenue derived from the sale and transportation of carbon dioxide for use in the enhanced recovery of oil or natural gas.

SECTION 3. EFFECTIVE DATE - EXPIRATION DATE. Section 1 of this Act is retroactively effective to January 1, 1997, and is effective through December 31, 2000, and is thereafter ineffective. Section 2 of this Act is effective after December 31, 2000.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 21, 1997
Filed March 21, 1997

TOWNSHIPS

CHAPTER 507

SENATE BILL NO. 2067
(Political Subdivisions Committee)
(At the request of the State Auditor)

AUDITOR DUTY UPON TOWNSHIP DISSOLUTION

AN ACT to amend and reenact section 58-02-31 of the North Dakota Century Code, relating to the duty of county auditors upon dissolution of townships.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 58-02-31 of the North Dakota Century Code is amended and reenacted as follows:

58-02-31. Duty of county auditor on dissolution. The county auditor, upon ~~the~~ dissolution of any civil township in ~~his~~ the auditor's county, shall ~~notify the state auditor thereof and shall~~ enter the fact of ~~such~~ the dissolution upon the proper record book ~~in his office.~~

Approved March 19, 1997
Filed March 19, 1997

TRUSTS, USES, AND POWERS

CHAPTER 508

HOUSE BILL NO. 1092

(Judiciary Committee)

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

UNIFORM PRUDENT INVESTOR ACT

AN ACT to create and enact eleven new sections to chapter 59-02 of the North Dakota Century Code, relating to the Uniform Prudent Investor Act; to amend and reenact section 30.1-34-02 of the North Dakota Century Code, relating to the duties of a trustee; and to repeal section 59-02-08 of the North Dakota Century Code, relating to the prudent investor rule.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 30.1-34-02 of the North Dakota Century Code is amended and reenacted as follows:

30.1-34-02. (7-302) Trustee's standard of care and performance. Except as otherwise provided by the terms of the trust, the trustee shall observe the standards in dealing with the trust assets ~~that would be observed by a prudent man dealing with the property of another, and if the trustee has special skills or is named trustee on the basis of representations of special skills or expertise, the trustee is under a duty to use these skills as provided in section 2 of this Act.~~

SECTION 2. Eleven new sections to chapter 59-02 of the North Dakota Century Code are created and enacted as follows:

Prudent investor rule.

1. Except as otherwise provided in subsection 2, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in section 2 of this Act.
2. The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

Standard of care - Portfolio strategy - Risk and return objectives.

1. A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.
2. A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust

portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

3. Among circumstances a trustee shall consider in investing and managing trust assets are any of the following that are relevant to the trust or its beneficiaries:
 - a. General economic conditions;
 - b. The possible effect of inflation or deflation;
 - c. The expected tax consequences of investment decisions or strategies;
 - d. The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;
 - e. The expected total return from income and the appreciation of capital;
 - f. Other resources of the beneficiaries;
 - g. Needs for liquidity, regularity of income, and preservation or appreciation of capital; and
 - h. An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.
4. A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.
5. A trustee may invest in any kind of property or type of investment consistent with the standards of section 2 of this Act.
6. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

Diversification. A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

Duties at inception of trusteeship. Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of section 2 of this Act.

Loyalty. A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

Impartiality. If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

Investment costs. In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

Reviewing compliance. Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

Delegation of investment and management functions.

1. A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:
 - a. Selecting an agent;
 - b. Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
 - c. Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.
2. In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.
3. A trustee who complies with the requirements of subsection 1 is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.
4. By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

Language invoking standard of section 2 of this Act. The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under section 2 of this Act: "investments permissible by law for investment of trust funds", "legal investments", "authorized investments", "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital", "prudent man rule", "prudent trustee rule", "prudent person rule", and "prudent investor rule".

Application to existing trusts. Section 2 of this Act applies to trusts existing on and created after August 1, 1997. As applied to trusts existing on August 1, 1997, section 2 of this Act governs only decisions or actions occurring after that date.

SECTION 3. REPEAL. Section 59-02-08 of the North Dakota Century Code is repealed.

CHAPTER 509

HOUSE BILL NO. 1276 (Representatives Berg, Carlson) (Senators Mutch, Krebsbach)

CHARITABLE TRUST RECEIPTS AND EXPENDITURES ALLOCATION

AN ACT to create and enact a new section to chapter 59-04.1 of the North Dakota Century Code, relating to allocation of receipts and expenditures of charitable trusts to principal or income.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 59-04.1 of the North Dakota Century Code is created and enacted as follows:

Certain charitable remainder unitrusts.

1. Notwithstanding any other provision of this chapter, unless the trust instrument directs otherwise, an increase in the value of the obligations described in this subsection owned by a charitable remainder unitrust of the type authorized in section 664(d)(3) of the Internal Revenue Code [26 U.S.C. 664(d)(3)] or its successor provisions is distributable as income when it becomes available for distribution:
 - a. A zero coupon bond;
 - b. An annuity contract before annuitization;
 - c. A life insurance contract before the death of the insured;
 - d. An interest in a common trust fund as defined in section 584 of the Internal Revenue Code [26 U.S.C. 584] or its successor provisions;
 - e. An interest in a partnership as defined in section 7701 of the Internal Revenue Code [26 U.S.C. 7701] or its successor provisions; and
 - f. Any other obligation for the payment of money that is payable at a future time in accordance with a fixed, variable, or discretionary schedule of appreciation in excess of the price at which it was issued.
2. The increase in value of the obligations described in subsection 1 is distributable to the beneficiary who was the income beneficiary at the time of the increase.

3. For purposes of this section, the increase in value of an obligation described in subsection 1 is available for distribution only when the trustee receives cash on account of the obligation. If the obligation is surrendered or liquidated partially, the cash available must be attributed first to the increase.

Approved March 14, 1997

Filed March 14, 1997

WAREHOUSING AND DEPOSITS

CHAPTER 510

SENATE BILL NO. 2038

(Legislative Council)

(Government Organization Committee)

STORAGE COMPANY LICENSING REPEAL

AN ACT to repeal chapter 60-07 of the North Dakota Century Code, relating to the licensing of storage companies as public warehouses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Chapter 60-07 of the North Dakota Century Code is repealed.

Approved March 11, 1997
Filed March 13, 1997

WATERS

CHAPTER 511

HOUSE BILL NO. 1482

(Representatives Grosz, Dorso, Boucher)

DEVILS LAKE AND WATER DEVELOPMENT BONDS

AN ACT to provide for the issuance of bonds to finance construction of an outlet to Devils Lake and to finance a statewide water development program; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Legislative findings and intent - Authority to issue bonds.

1. The legislative assembly finds that the Devils Lake basin is suffering and facing a worsening flood disaster. It further finds that construction of an outlet to Devils Lake is necessary for the protection of health, property, and enterprises, and for the promotion of prosperity and the general welfare of the people of the state of North Dakota, and that construction of the outlet involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary that an outlet for Devils Lake be constructed by the state water commission to provide flood relief to the Devils Lake basin.
2. The legislative assembly also finds that there is a critical need to develop a comprehensive statewide water development program to serve the long-term water resource needs of the state and its people and to protect the state's current usage of, and the state's claim to, its proper share of Missouri River water.
3. In furtherance of these public purposes, the state water commission may issue bonds under chapter 61-02 in an aggregate amount not to exceed twenty million dollars to finance the cost of these projects provided that:
 - a. The commission may only issue bonds for construction of an outlet to Devils Lake when the United States authorizes construction of an outlet including plans addressing damage to basic infrastructure such as roads, culverts, and bridges; riverbank erosion; downstream flooding; and increased water treatment costs caused by or resulting from construction of the outlet.
 - b. The commission may only issue bonds to finance a comprehensive statewide water development program pursuant to this Act when the Congress of the United States enacts legislation for the completion of the Garrison diversion unit, which may include the delivery of water to the northwest area water supply project; southwest pipeline project; Turtle Lake irrigation district; Nesson-Valley irrigation district; Elk Charbonneau-Timber Creek irrigation district; the

Williston irrigation project; the Oakes irrigation project; other municipal, rural, and industrial water supply projects; delivery of Missouri River water to the Sheyenne River; and an inlet to Devils Lake. This Act does not affect the state water commission's authority to otherwise issue bonds pursuant to chapter 61-02.

- c. The commission shall notify the budget section of the legislative council if either of the contingencies in subdivision a or b occur and bonds are issued under this Act.
- d. The authority of the commission to issue bonds under this Act is effective through July 1, 1999, and after that date is ineffective.

SECTION 2. State water commission may match federal funds. The state water commission may use all or part of the proceeds of bonds issued as provided in this Act to match any federal funds available for the projects identified in subdivisions a and b of subsection 3 of section 1 of this Act. Proceeds realized from the sale of bonds under this Act are available to match federal funds in the ratio of one to three.

SECTION 3. Limitation of action. No action may be brought or maintained in any court in this state questioning the validity of any bonds issued under this Act unless the action is commenced within thirty days after the adoption of the resolution of the state water commission authorizing the sale of the bonds. The state water commission may commence a special proceeding any time after the effective date of this Act in and by which the constitutionality and validity of the bonds to be issued pursuant to this Act may be judicially examined, approved, and confirmed, or disapproved and disaffirmed. Proceedings must comply as nearly as possible with the procedure required for declaratory judgment proceedings.

SECTION 4. Bonds payable from appropriations and other revenues.

1. Bonds issued under this Act are payable from transfers to be made by the legislative assembly from the accumulated and undivided profits of the Bank of North Dakota to the resources trust fund and thereafter appropriated for payment of the bonds or from appropriations of other available revenues, and other revenues available to the state water commission for that purpose, including any federal moneys received by the state for the construction of an outlet to Devils Lake to pay bonds issued for that project, or financing a statewide water development program to pay bonds issued for that project.
2. Obligations issued under the provisions of this Act do not constitute a debt, liability, or obligation of the state of North Dakota or a pledge of the faith and credit of the state of North Dakota, but are payable solely from the accumulated and undivided profits of the Bank of North Dakota or other sources provided for by the legislative assembly.
3. The state water commission shall include in its submission to the governor for inclusion by the governor in the biennial executive budget of the state for each year of the respective biennium during the term of any bonds issued under this Act an amount fully sufficient to pay the principal and interest required to be paid in each year of the biennium, if any, from moneys from nongeneral fund sources. Provided, that should the governor not include in the executive budget for any reason the amounts required to be included by this section, the state water

commission shall request independently that the legislative assembly amend the executive budget appropriation so as to include the amounts.

SECTION 5. APPROPRIATION. The sum of \$2,000,000, or so much of the sum as may be necessary, is transferred from the accumulated and undivided profits of the Bank of North Dakota to the resources trust fund. Upon transfer of the funds by the Bank of North Dakota, there is hereby appropriated out of any moneys in the resources trust fund, not otherwise appropriated, the sum of \$2,000,000, or so much of the sum as may be necessary, to the state water commission for the biennium beginning July 1, 1997, and ending June 30, 1999, for the purpose of paying the interest on and principal of the bonds issued in accordance with this Act.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 10, 1997
Filed April 10, 1997

CHAPTER 512

HOUSE BILL NO. 1073

(Legislative Council)
(Water Resources Committee)
(Representative Olson)
(Senators Goetz, Urlacher)

EASTERN NORTH DAKOTA WATER SUPPLY CRITICAL PRIORITY

AN ACT relating to establishing a water supply for eastern North Dakota as a critical priority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Findings and declaration of policy - Water to eastern North Dakota a critical priority. The legislative assembly finds that many areas and localities in eastern North Dakota do not enjoy safe drinking water, and that the water in these areas and localities contains iron, sulfates, alkali, salt, nitrates, fluoride, and other hazardous and discoloring substances. It is also found that other areas and localities in eastern North Dakota do not have sufficient quantities of water to ensure a dependable, long-term water supply. The legislative assembly further finds that supplementation of the water resources of eastern North Dakota with water supplies from the Missouri River may be the only alternative to provide eastern North Dakota with a dependable source of safe, good quality water and an adequate quantity of water.

It is further declared that effective development and utilization of the land and water resources of this state; the opportunity for greater economic security; the protection of health, property, enterprise, and the preservation of the benefits from the land and water resources of this state; and the promotion of the prosperity and general welfare of all of the people of North Dakota involve, necessitate, and require the exercise of the sovereign powers of the state and concern a public purpose. Therefore, in order to accomplish this public purpose, it is declared necessary that a means to supply and distribute water to the people of eastern North Dakota for purposes including domestic, rural water, municipal, livestock, light industrial, mining, agriculture, and other uses must be developed. In furtherance of this public purpose, the supply and delivery of water to eastern North Dakota is established as a critical priority and the state water commission shall continue to cooperate with the Garrison diversion conservancy district in addressing this critical priority.

Approved March 13, 1997
Filed March 13, 1997

CHAPTER 513

SENATE BILL NO. 2104

(Natural Resources Committee)

(At the request of the State Water Commission)

WATER COMMISSION MEETINGS

AN ACT to amend and reenact section 61-02-08 of the North Dakota Century Code, relating to meetings of the state water commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-02-08 of the North Dakota Century Code is amended and reenacted as follows:

61-02-08. Meetings of commission. ~~Notice of any meeting of the commission shall be given by written notice sent to each member of the commission at least three days before the meeting. No notice shall be necessary for any member who has personally signed an admission of notice and consent to holding the meeting.~~ The commission may hold meetings at such times and places as it, by resolution, may provide. The chairman, or in the chairman's absence or disability, the vice chairman of the commission, may issue a call for any meeting at any time. The governor, as chairman, shall preside at all meetings of the commission and in case of the governor's absence or disability the vice chairman shall preside.

Approved March 19, 1997

Filed March 19, 1997

CHAPTER 514

SENATE BILL NO. 2105

(Natural Resources Committee)

(At the request of the State Water Commission)

CONTRACT FUND PURPOSES

AN ACT to amend and reenact section 61-02-64.1 of the North Dakota Century Code, relating to the purpose of the contract fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ **SECTION 1. AMENDMENT.** Section 61-02-64.1 of the North Dakota Century Code is amended and reenacted as follows:

61-02-64.1. Contract fund - Purpose - Reimbursements to be deposited with the state treasurer. All contractual obligations of the commission, including obligations with respect to any works financed with bonds issued under this chapter, and excepting salaries and expenses of commission employees and the cost of any office supplies, materials, and equipment not related to works financed with bonds, ~~shall~~ must be paid from the contract fund. The moneys in the contract fund ~~shall~~ must be paid out or disbursed in ~~such the~~ the manner ~~as may~~ be determined by the commission. Any moneys paid to the commission by any department, agency, or political subdivision of this or another state or of the United States or any person, corporation, or limited liability company to meet its part of the cost of a water project, shared with the commission on a matching basis, and as determined by a contract entered into with the commission, ~~shall~~ must be deposited with the state treasurer and are hereby appropriated out of the state treasury, and ~~shall~~ must be credited to the contract fund or held pursuant to the terms of the resolution or trust indenture of the commission adopted or entered into under this chapter.

Approved March 21, 1997

Filed March 21, 1997

¹ Section 61-02-64.1 was also amended by section 1 of House Bill No. 1170, chapter 515.

CHAPTER 515

HOUSE BILL NO. 1170

(Representatives Wald, Jacobs, Kempenich)
(Senators Goetz, Krauter, Urlacher)

SOUTHWEST PIPELINE PROJECT BONDS

AN ACT to amend and reenact sections 61-02-64.1, 61-02-64.2, 61-24.3-01, and 61-24.3-18 of the North Dakota Century Code, relating to repayment of obligations with respect to bond issues and to issuing and repaying bonds for the southwest pipeline project; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

² **SECTION 1. AMENDMENT.** Section 61-02-64.1 of the North Dakota Century Code is amended and reenacted as follows:

61-02-64.1. Contract fund - Purpose - Reimbursements to be deposited with the state treasurer. ~~All~~ Unless otherwise provided under the terms of a bond resolution or trust indenture adopted by the commission pursuant to this chapter, all contractual obligations of the commission, including obligations with respect to any works financed with bonds issued under this chapter, and excepting salaries and expenses of commission employees and the cost of any supplies, materials, and equipment ~~not related to works financed with bonds, shall, must~~ be paid from the contract fund. The moneys in the contract fund ~~shall must~~ be paid out or disbursed in ~~such the~~ manner as may be determined by the commission. Any moneys paid to the commission by any department, agency, or political subdivision of this or another state or of the United States or any person, corporation, or limited liability company to meet its part of the cost of a water project, shared with the commission on a matching basis, and as determined by a contract entered into with the commission, ~~shall must~~ be held pursuant to the terms of the resolution or trust indenture adopted by the commission pursuant to this chapter or deposited with the state treasurer and are hereby appropriated out of the state treasury, and shall be credited to the contract fund or held pursuant to the terms of the resolution or trust indenture of the commission adopted or entered into under this chapter. Moneys deposited with the state treasurer are appropriated to the commission and must be credited to the contract fund.

SECTION 2. AMENDMENT. Section 61-02-64.2 of the North Dakota Century Code is amended and reenacted as follows:

61-02-64.2. Repayment of loan proceeds and reimbursements deposited in resources trust fund. Notwithstanding section 61-02-64.1, any repayment made after January 1, 1991, of any loans disbursed from the contract fund or resources trust fund and any moneys paid to the state or the commission after January 1, 1991, to reimburse the commission for moneys, other than bond proceeds, used for

² Section 61-02-64.1 was also amended by section 1 of Senate Bill No. 2105, chapter 514.

municipal, rural, and industrial water supply projects must be deposited in the resources trust fund in the state treasury.

SECTION 3. AMENDMENT. Section 61-24.3-01 of the North Dakota Century Code is amended and reenacted as follows:

61-24.3-01. Legislative findings and intent. The legislative assembly finds that adequate water supplies for municipal, domestic, livestock, rural, irrigation, industrial, and other uses are essential for the social stability and economic security of the people of the state of North Dakota. It is further found that the development and utilization of the water resources of this state are necessary for the protection of health, property, and enterprise, and for the promotion of prosperity and general welfare of the people of the state of North Dakota, and that such development and utilization of water resources in this state involves, necessitates, and requires the exercise of the sovereign powers of the state and concern a public purpose. Therefore, it is hereby declared necessary that the southwest pipeline project, as authorized and approved pursuant to this chapter, be established and constructed, to provide for the supplementation of the water resources of a portion of the area of North Dakota south and west of the Missouri River with water supplies from the Missouri River for multiple purposes, including domestic, rural, and municipal uses. In furtherance of this public purpose, the state water commission may provide for the issuance of bonds not to exceed fifteen million dollars in accordance with chapter 61-02 to finance the cost of the project. The provisions of this chapter ~~shall~~ may not be construed to, in any manner, abrogate or limit the rights, powers, duties, ~~and~~ or functions of the state water commission or the state engineer, but ~~shall be~~ are supplementary thereto. Nor ~~shall~~ may this chapter be construed as limiting or in any way affecting the laws of this state relating to the organization or operation of irrigation districts, water resource districts, or other political subdivisions.

SECTION 4. AMENDMENT. Section 61-24.3-18 of the North Dakota Century Code is amended and reenacted as follows:

61-24.3-18. Water rates for capital costs - Deposit. Money derived and received from water user entities for capital costs of the southwest pipeline project ~~shall~~ may be pledged by the commission for the repayment of bonds issued for the construction of the southwest pipeline project. Any money not pledged must be deposited by the commission in the resources trust fund, established pursuant to section 57-51.1-07, and ~~shall~~ may be expended only pursuant to legislative appropriation for the purposes specified in subsection 1 of section 57-51.1-07.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 516

SENATE BILL NO. 2260

(Senators Traynor, Thompson)
(Representatives D. Johnson, Kunkel)

LAKE OBSTRUCTION REMOVAL

AN ACT to create and enact a new section to chapter 61-03 of the North Dakota Century Code, relating to removal, modification, or destruction of dangers in, on the bed of, or adjacent to a navigable lake; to amend and reenact section 57-28-09 of the North Dakota Century Code, relating to tax deeds issued to the state; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-03 of the North Dakota Century Code is created and enacted as follows:

Removal, modification, or destruction of dangers in, on the bed of, or adjacent to a navigable lake.

1. If the state engineer finds that buildings, structures, boat docks, debris, or other manmade objects, except a fence or corral, situated in, on the bed of, or adjacent to a lake that has been determined to be navigable by a court are, or are imminently likely to be, a menace to life or property or public health or safety, the state engineer shall issue an order to the person responsible for the object. The order must specify the nature and extent of the conditions, the action necessary to alleviate, avert, or minimize the danger, and a date by which that action must be taken. If the state engineer determines that an object covered by flood insurance is imminently likely to be a menace to life or property or public health or safety, the date specified in the order for action to be taken may not precede the date on which the person is eligible to receive flood insurance proceeds. The person responsible is the person who owns or has control of the property on which the object is located, or if the property is inundated with water, the person who owned or had control of the property immediately before it became inundated by water.
2. If the action is not taken by the date specified, but not less than twenty days from the date of service of the notice, the state engineer may cause the action to be taken. The state engineer may require the action to be taken in less than twenty days if an emergency exists.
3. The state engineer may bring an action to enforce an order of the state engineer, or if the state engineer causes the action to be taken, the state engineer may:

 - a. Assess the costs of taking such action, or such portion as the state engineer determines, against any property of the person responsible; or

- b. Bring a civil action against the person responsible to recover the costs incurred in taking the action.

If the state engineer chooses to recover costs by assessing the cost against property of the person responsible and the property is insufficient to cover the costs incurred, the state engineer may bring a civil action to recover any costs not recovered through the assessment process. Any assessments levied under this section must be collected in the same manner as other real estate taxes are collected and paid. Any costs recovered must be deposited in the fund from which the expenses were paid.

4. A person who receives an order, within ten days of the date of service of the order, may demand, in writing, a hearing on the matter. The demand for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the state engineer determines the issues, facts, and law to be presented are well-founded and not frivolous, and the request for a hearing was not made merely to interpose delay, the state engineer shall set a hearing date without undue delay.
5. In the event of an emergency, the state engineer may immediately apply to the district court of the county in which the property is located for an injunction ordering the person responsible to modify, remove, abate, or otherwise eliminate the dangerous condition.
6. Any person aggrieved by the action of the state engineer may appeal the decision to the district court of the county in which the land is located in accordance with chapter 28-32. A hearing as provided for in this section is a prerequisite to an appeal unless the hearing was denied by the state engineer.
7. If the state engineer has issued an order under this section with regard to a building, structure, boat dock, debris, or other manmade object that the state engineer has determined is imminently likely to be a menace to life or property or public health or safety, and it later becomes known that the object would not have become a menace, a person who has taken action required by the state engineer's order is entitled to compensation in an amount equal to the value of any property destroyed and reasonable costs incurred as a result of complying with the state engineer's notice.
8. Any person claiming compensation for the destruction of property or costs incurred under subsection 7 must file a claim with the state engineer in the form and manner required by the state engineer. Unless the amount of compensation is agreed to between the claimant and the state engineer, the amount of compensation must be calculated in the same manner as compensation due for taking of property pursuant to the condemnation laws of this state. In determining compensation, the proceeds of any flood or other insurance or any other kind of compensatory payments must be subtracted from the amount paid.

SECTION 2. AMENDMENT. Section 57-28-09 of the North Dakota Century Code is amended and reenacted as follows:

57-28-09. Tax deed to be issued. After the expiration of the period of redemption for property that was sold to the county for taxes, and which has not been assigned or redeemed, the county auditor shall issue a tax deed to the county, or in cases in which the state engineer has made an assessment against the property under section 1 of this Act, the county auditor shall issue a tax deed to the state. The tax deed passes the property in fee to the county or the state, free from all encumbrances except installments of special assessments certified to the county auditor or which may become due after the service of the notice of expiration of the period of redemption and except for a homestead credit for special assessments lien provided for in section 57-02-08.3. While the county or the state holds title under a tax deed, it is not liable for the payment of any installments of special assessments which become due unless the board of county commissioners or the state has leased or contracted to sell the property. A deed issued under this section is prima facie evidence of the truth and regularity of all facts and proceedings before the execution of the deed.

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

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 517

SENATE BILL NO. 2079

(Natural Resources Committee)
(At the request of the State Engineer)

RURAL WATER SYSTEM WATER RIGHTS

AN ACT to create and enact a new subsection to section 61-04-01.1 of the North Dakota Century Code, relating to the definition of rural water system; and to amend and reenact sections 61-04-06.2, 61-04-23, 61-04-24, and 61-04-25 of the North Dakota Century Code, relating to forfeiture of water rights held by rural water supply systems.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 61-04-01.1 of the North Dakota Century Code is created and enacted as follows:

"Rural water system" means a water supply system designed to serve regional needs.

SECTION 2. AMENDMENT. Section 61-04-06.2 of the North Dakota Century Code is amended and reenacted as follows:

61-04-06.2. Terms of permit. The state engineer may issue a conditional permit for less than the amount of water requested, but in no case may the state engineer issue a permit for more water than can be beneficially used for the purposes stated in the application except that water permits for incorporated municipalities or rural water systems may contain water in excess of present needs if based upon reasonable projections of future water needs of the municipality or the rural water system. The state engineer may require modification of the plans and specifications for the appropriation. The state engineer may issue a permit subject to fees for water use, terms, conditions, restrictions, limitations, and termination dates the state engineer considers necessary to protect the rights of others, and the public interest. Conditions and limitations so attached ~~shall~~ must be related to matters within the jurisdiction of the state engineer; provided, however, that all conditions attached to any permit issued prior to July 1, 1975, ~~shall be~~ are binding upon the permittee.

SECTION 3. AMENDMENT. Section 61-04-23 of the North Dakota Century Code is amended and reenacted as follows:

61-04-23. Forfeiture of water rights - Inspection of works. Any appropriation of water must be for a beneficial use, and when the appropriator fails to apply it to the beneficial use cited in the permit or ceases to use it for the beneficial use cited in the permit for three successive years, unless ~~such~~ the failure or cessation of use has been due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the state engineer may declare ~~such~~ the water permit or right forfeited. For purposes of this chapter, an incorporated municipality or rural water system has good and sufficient cause excusing the failure to use a water permit, if the water permit may reasonably be necessary for the future water requirements of the municipality or the rural water system. The state engineer shall, as often as necessary, examine the condition of all works constructed or partially constructed within the state and compile information concerning the condition of

every water permit or right, and all ditches and other works constructed or partially constructed thereunder.

SECTION 4. AMENDMENT. Section 61-04-24 of the North Dakota Century Code is amended and reenacted as follows:

61-04-24. Forfeiture of water rights - Notice - Contents. If it ~~shall appear~~ appears that any water appropriation or portion thereof has not been used for a beneficial use, or having been so used at one time has ceased to be used for ~~such~~ that purpose for more than three successive years, unless ~~such~~ the failure or cessation of use ~~shall have been~~ is due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the state engineer shall set a place and time for a hearing. For purposes of this chapter, an incorporated municipality or a rural water system has good and sufficient cause excusing the failure to use a water permit, if the water permit may reasonably be necessary for the future water requirements of the municipality or the rural water system. Any holder of a water permit using water from a common source of supply, any applicant therefor, or any interested party may request the state engineer to conduct ~~such~~ a hearing, the purpose of which ~~shall be~~ is the cancellation of any unused water rights to ~~such~~ the common source of supply. Any decision of the state engineer in denying a request for ~~such~~ a hearing may be appealed in the manner prescribed by section 61-04-07. Prior to the hearings the state engineer shall serve notice upon the permitholder and upon the owners of land benefited by ~~such~~ the appropriation or works, except where the lands benefited are within the geographical boundaries of a city, in which case notice ~~shall~~ must be given to the governing body of the city, to show cause by such time and at such place why the water appropriation or a portion thereof should not be declared forfeited and canceled.

In addition to the time and place of hearing, ~~such~~ the notice ~~shall~~ must contain:

1. A description of the water appropriation.
2. The permit number upon the records of the commission.
3. The date of priority.
4. The point of diversion.
5. A description of the lands benefited by ~~such~~ the appropriation as indicated on the application for a water permit on file in the office of the commission.
6. Notice that the permitholder, the owners of land benefited by ~~such~~ the appropriation or works, and other interested parties whose right to use water may be affected by a cancellation of the appropriation are to show cause why ~~such~~ the appropriation, or a portion thereof, should not be canceled.

The notice ~~shall~~ must be served personally or sent by registered or certified mail at least thirty days before the date of hearing to the permitholder and to the owners of land benefited by ~~such~~ the appropriation as indicated on the application for a water permit on file in the office of the commission, or to persons having an interest in works as they appear from the records of the county treasurer or the register of deeds. In addition, ~~such~~ the notice ~~shall~~ must be published in a newspaper of

general circulation in the county in which the point of diversion is located once each week for two consecutive weeks prior to the date of hearing.

SECTION 5. AMENDMENT. Section 61-04-25 of the North Dakota Century Code is amended and reenacted as follows:

61-04-25. Forfeiture of water rights - Hearing - Appeal. At ~~such~~ the hearing the verified report of the state engineer or engineers of the state water commission ~~shall be~~ is prima facie evidence for the forfeiture and cancellation of ~~such~~ the water permit or portion thereof. If no one appears at the hearing, ~~such~~ the water permit or portion thereof ~~shall~~ must be declared forfeited and canceled. If interested parties ~~shall~~ appear and contest the cancellation, the state engineer shall hear the evidence and if it appears that ~~such~~ the water has not been put to a beneficial use or, having been so used at one time, has ceased to be used for such purpose for more than three successive years, unless ~~such~~ the failure or cessation of use ~~shall have been~~ is due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the same, or a portion thereof, ~~shall~~ must be declared forfeited and canceled. For purposes of this chapter, an incorporated municipality or a rural water system has good and sufficient cause excusing the failure to use a water permit, if the water permit may reasonably be necessary for the future water requirements of the municipality or the rural water system. An appeal may be taken from the decision of the state engineer in accordance with chapter 28-32.

Approved March 7, 1997

Filed March 10, 1997

CHAPTER 518

SENATE BILL NO. 2265

(Senators Nething, Klein)
(Representative DeKrey)

IRRIGATION DISTRICT BONDS

AN ACT to create and enact a new subsection to section 61-07-03 and two new sections to chapter 61-08 of the North Dakota Century Code, relating to the issuance of revenue bonds; to amend and reenact sections 61-07-07, 61-07-08, 61-08-01, 61-08-06, 61-08-07, 61-08-09, 61-08-12, 61-08-13, 61-08-14, 61-08-22, 61-08-23, 61-08-25, 61-08-26, 61-08-27, 61-08-28, 61-08-29, 61-08-34, 61-08-35, 61-08-39, 61-09-13, and 61-09-14 of the North Dakota Century Code, relating to powers and bonds of irrigation districts; and to repeal sections 61-08-10, 61-08-11, 61-08-16, 61-08-17, 61-08-18, 61-08-19, 61-08-20, 61-08-21, 61-08-33, 61-08-36, 61-08-37, and 61-08-38 of the North Dakota Century Code, relating to registration of bonds, cancellation of bonds, issuance of warrants, and terms of refunding bonds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 61-07-03 of the North Dakota Century Code is created and enacted as follows:

Acquire real property, buildings, improvements, and equipment used or useful in connection with storing, warehousing, distributing, or selling agricultural products, which may be located within or outside the district.

SECTION 2. AMENDMENT. Section 61-07-07 of the North Dakota Century Code is amended and reenacted as follows:

61-07-07. Board to formulate general plan of operation - Contents. As soon as practicable after the organization of an irrigation district, the board of directors, by a resolution entered on its records, shall formulate a general plan of its proposed operation in which it ~~shall~~ must state:

1. What constructed works or other property are proposed to be purchased, the purchase price ~~thereof~~, and what construction work is proposed to be done, and the estimated cost of ~~such~~ the construction.
2. Whether funds to pay ~~such~~ the purchase price or cost of construction ~~shall~~ will be raised by issuing bonds ~~or district improvement warrants~~ or by creating a fund through the collection of ~~water~~ rentals ~~or~~ charges from water users, or by creating a fund by levying assessments against the lands benefited, or whether it is contemplated to raise funds by the use of all or a combination of ~~such~~ those methods of raising funds.

SECTION 3. AMENDMENT. Section 61-07-08 of the North Dakota Century Code is amended and reenacted as follows:

61-07-08. Surveys, examinations, and plans made to determine cost of construction in district - State engineer to prepare report. For the purpose of ascertaining the cost of any irrigation construction work in a district, the board shall

cause such surveys, examinations, and plans to be made as ~~shall~~ may demonstrate the practicability of ~~such~~ the plan and furnish the proper basis for an estimate of the cost of carrying out the ~~same~~ plan. All ~~such~~ surveys, examinations, maps, plans, and estimates ~~shall~~ must be made under the direction of a registered professional engineer, who may be the state engineer, and ~~shall~~ must be certified by the registered professional engineer. The board ~~then~~ shall submit a copy of ~~the same~~ to the state engineer who shall prepare a summary report ~~thereon~~ and file the ~~same~~ report with the board. ~~Such~~ The report ~~shall~~ must contain such matters as in the judgment of the state engineer ~~may be~~ are desirable. Upon receiving ~~such~~ the report, the board of directors shall ~~proceed to~~ determine the amount of money required to be raised.

SECTION 4. AMENDMENT. Section 61-08-01 of the North Dakota Century Code is amended and reenacted as follows:

61-08-01. Resolution to institute initial proceedings for bonds - Contents - Adoption. Proceedings for the issuance of bonds by an irrigation district ~~shall~~ must be instituted by the adoption of an initial resolution ~~therefor~~ by the board of directors of the district. ~~Such~~ The initial resolution ~~shall~~ must state:

1. The maximum principal amount of bonds proposed to be issued.
2. ~~The maximum interest rate they shall bear.~~
3. ~~Whether they will be of serial or single maturity.~~
4. ~~If a single maturity, the year thereof, or if serial maturities, the years of such maturities, but not the amount for each of such years.~~
5. The purpose for which ~~they~~ the bonds are proposed to be issued.
6. 3. The total amount of bonded indebtedness, if any, of the district.
7. 4. Any other statement of fact deemed advisable by the board.

~~Such~~ The initial resolution may be adopted by a majority of the board at any regular meeting ~~thereof~~ or at any special meeting of which the prescribed notice has been given.

SECTION 5. AMENDMENT. Section 61-08-06 of the North Dakota Century Code is amended and reenacted as follows:

61-08-06. Maturity of bonds issued - When installment of principal falls due - Amount Bonds - Terms. Bonds issued by any irrigation district under the provisions of this chapter ~~shall~~ must be in the denominations and form, be subject to redemption with or without premium, and be subject to any other terms or conditions as the board of directors may determine, and must mature in not ~~less than ten years nor~~ more than forty years ~~after the date thereof~~ from the date of the bonds. If the maturities are serial, the first installment of principal ~~shall~~ must fall due not more than three years, and the last installment not more than forty years, from the date of the bonds. ~~No installment of principal shall be less than one-third of the amount of the largest installment, except that the amounts of installments of principal may be such that the increase thereof from year to year approximately shall equal the decrease from year to year in the interest on the bonds remaining unpaid.~~

SECTION 6. AMENDMENT. Section 61-08-07 of the North Dakota Century Code is amended and reenacted as follows:

61-08-07. Bonds payable to whom - Interest coupons - Rate of interest - Numbering. Every bond provided for in this chapter shall must be a negotiable instrument payable to "bearer" or to the "bearer or registered owner", with interest coupons attached, payable annually or semiannually, and must bear interest at a rate or rates resulting in an average annual net interest ~~cost~~ rate which shall must not exceed twelve percent per annum ~~on these issues~~ which if the bonds are sold at private sale. There is no interest rate ceiling on ~~these issues~~ bonds sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. Each bond shall must specify the time and place of payment of the principal ~~and shall be numbered consecutively with the other bonds of the same issue, which shall begin with number one, or with any other number, as the board may direct.~~

SECTION 7. AMENDMENT. Section 61-08-09 of the North Dakota Century Code is amended and reenacted as follows:

61-08-09. Execution of bonds and interest coupons - Validity of bonds not impaired by change in officers. The bonds issued under the provisions of this chapter shall must be executed in the name of and for the district by the manual or facsimile signatures of the chairman and secretary of the board. ~~The interest coupons attached to such bonds may be executed by the lithographed or engraved facsimile signature of such officers.~~ The validity of every bond so executed shall remain unimpaired is not impaired by the fact that ~~one or more of the a~~ subscribing or attesting officers have officer has ceased to be ~~such an officer or officers of the district~~ before delivery to the purchaser.

SECTION 8. AMENDMENT. Section 61-08-12 of the North Dakota Century Code is amended and reenacted as follows:

61-08-12. Advertising required before district sells issue Sale of bonds - Contents of notice - Who to receive notice. ~~No irrigation district shall enter into any contract for the sale of any issue of its bonds which exceeds the total sum of one hundred thousand dollars without first advertising for bids in the manner prescribed in this section. A Bonds may be sold at private sale without notice or at public sale after a notice calling for bids shall be has been published at least once in the official newspaper of each county in which the district is situated not less than fifteen days nor more than thirty days before the date specified therein for receiving such bids. The notice may be in any form but shall must specify the amount of bonds offered for sale and the date or dates of the maturity thereof, and the notice shall must specify that the bids shall must be sealed and in writing and shall must state the time when and place where bids will be received and will be opened. A copy of the notice shall be mailed to the tax commissioner at Bismarck not less than ten days before the date specified for the opening of bids. Failure to publish the notice or to send a copy thereof to the tax commissioner shall not impair the validity of the bonds but shall render unenforceable any executory contract entered into for the sale thereof.~~

SECTION 9. AMENDMENT. Section 61-08-13 of the North Dakota Century Code is amended and reenacted as follows:

61-08-13. Opening bids for bond issues - Record of bids kept - Bids accompanied by check. At the time specified for opening the bids for bonds, the secretary of the board publicly shall open the bids in the presence of the directors board, and after the bids have been opened, the secretary shall enter in a permanent

record the amount and rate of interest of each bid and the name and address of the bidder. Each bid ~~shall~~ must be accompanied by a certified check, cashier's check, surety bond, or bank draft in the amount of not less than ~~two~~ one percent of ~~such~~ the bid.

SECTION 10. AMENDMENT. Section 61-08-14 of the North Dakota Century Code is amended and reenacted as follows:

61-08-14. Awarding sale of bond issue - Rejecting bids - Purchasing irrigation works already constructed. The board of directors shall award the sale of bonds to the bidder who agrees to purchase them upon the terms most favorable to the district, except that the board may reject any and all bids. No sale ~~shall~~ may be for less than ninety-eight percent of the par value and accrued interest on such the bonds. ~~If the board has determined to purchase irrigation works already constructed, the bonds may be issued and delivered at their par value in payment thereof.~~

SECTION 11. AMENDMENT. Section 61-08-22 of the North Dakota Century Code is amended and reenacted as follows:

61-08-22. Bonds and district improvement warrants may be secured by trust indenture - Powers vested in trustee. In the discretion of the board, bonds ~~and district improvement warrants~~ may be secured by a trust indenture by and between the district and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside this state. The board may vest in ~~such the~~ the trustee the right to enforce any covenant made to secure or to pay ~~such the~~ the bonds ~~or improvement warrants~~.

SECTION 12. AMENDMENT. Section 61-08-23 of the North Dakota Century Code is amended and reenacted as follows:

61-08-23. Where money received from bond issue or improvement warrants placed - Lien on money. All money received from any bond issue ~~or from the sale of district improvement warrants~~ shall must be placed in a fund and applied solely ~~to the payment of the cost of the works for the purpose for which it was borrowed and for no other purpose except that the money may be temporarily invested in securities approved by the board.~~ A lien is granted upon ~~such the~~ the money until so applied, in favor of the owners or holders of ~~such the~~ the bonds ~~or improvement warrants~~ or in favor of the trustee ~~created~~ appointed in connection with ~~such the~~ the bonds ~~or improvement warrants~~.

SECTION 13. AMENDMENT. Section 61-08-25 of the North Dakota Century Code is amended and reenacted as follows:

61-08-25. Bonds; improvement warrants; and contracts payable from assessments of real property and from water charges. Bonds ~~or improvement warrants~~ issued by any irrigation district, and the interest thereon, and contracts not payable in bonds ~~or improvement warrants~~, made and entered into by the district for the acquisition of irrigation works already constructed, or for the establishment and construction of irrigation works, or any part thereof, ~~shall~~ must be paid from the revenue obtained from special assessments upon the real property of the district or from any other revenue available for that purpose obtained from charges to water users or from the sale of water to any person, firm, corporation, limited liability company, municipality, or other irrigation district, or by a combination of special assessments and water charges.

SECTION 14. AMENDMENT. Section 61-08-26 of the North Dakota Century Code is amended and reenacted as follows:

61-08-26. County treasurer to be custodian of funds. The county treasurer shall act as the custodian of sinking funds, or funds created for the payment of bonds ~~or improvement warrants~~, except that in case an irrigation district is located in more than one county the board ~~of directors of the district~~, by recorded resolution, shall designate the county treasurer who shall act as the custodian of ~~such the~~ funds. Upon the adoption of ~~such the~~ resolution, the county treasurer so designated shall act as ~~such the~~ custodian. A copy of ~~such the~~ resolution and a copy of each and every contract, trust agreement, or trust indenture relating to the issuance and payment of bonds; ~~or improvement warrants~~; shall must be filed with ~~such the~~ county treasurer.

SECTION 15. AMENDMENT. Section 61-08-27 of the North Dakota Century Code is amended and reenacted as follows:

61-08-27. District treasurer to remit moneys to county treasurer - Crediting proper fund. The district treasurer shall remit to the county treasurer all moneys received by the treasurer in payment of assessments levied for sinking funds or for the payment of bonds ~~and improvement warrants~~. The district treasurer also shall remit to the county treasurer moneys raised from water rentals or water charges, when directed to do so by the board, and the district treasurer shall designate the fund or funds to which ~~such the~~ moneys belong, except that all moneys, from whatever source derived, obligated under the terms of any contract, or agreement made and entered into by the district, to meet payments as they become due ~~thereunder~~, shall be paid and remitted to ~~such the~~ county treasurer and shall be credited by the county treasurer to the proper fund.

SECTION 16. AMENDMENT. Section 61-08-28 of the North Dakota Century Code is amended and reenacted as follows:

61-08-28. Payment of bonds and warrants due - Redemption of bonds and warrants - Notice of redemption - Contents - Bids - Opening interest. ~~Upon the presentation to the~~ The county treasurer of bonds ~~or improvement warrants or the coupons of either, then due and payable,~~ the county treasurer shall pay the same shall pay the principal of, premium, if any, and interest on the bonds upon maturity, redemption, or purchase in the open market from any moneys in the fund created for the payment thereof. ~~Whenever the fund created for the payment of any series of bonds or improvement warrants shall amount to ten thousand dollars, the board shall direct the county treasurer to pay such an amount of such bonds, or improvement warrants, not due, at the lowest value at which they may be offered for redemption, except that no bond or improvement warrant shall be redeemed at a rate above par. Notice of such proposed redemption shall be advertised at least once in the official newspaper of the county in which the custodian of sinking funds is county treasurer, and in any other newspaper which the board of directors may designate. Such notice shall state that sealed proposals will be received for the redemption of such bonds or improvement warrants at the time and place therein stated. Such proposals shall be opened by the board in open meeting and the lowest bid must be accepted. In case the bids are equal, the lowest numbered bonds or improvement warrants, as the case may be, shall have the preference. If no bonds, or improvement warrants, are presented for redemption, the county treasurer, with the approval and consent of the board of directors, shall invest such money in bonds of the United States or in bonds or warrants of the state of North Dakota. The county treasurer may disburse moneys in the fund to the fiscal agent or trustee appointed by the board for the purpose of paying the principal of, premium, if any,~~

and interest on the bonds for which the fund was created, without any authorization from the board.

SECTION 17. AMENDMENT. Section 61-08-29 of the North Dakota Century Code is amended and reenacted as follows:

61-08-29. Claims paid by district treasurer - Insufficient funds - Verification of claims. No claim, other than payments of principal of, premium, if any, or interest on bonds, shall be paid by the district treasurer until the same shall have claim has been allowed by the board, and only upon warrants signed by the president and countersigned by the secretary. If ~~such~~ the treasurer ~~has not~~ does not have sufficient money on hand to pay ~~such~~ a warrant when it is presented for payment, the treasurer shall endorse thereon "Not paid for want of funds" and ~~endorse thereon~~ the date when so presented, over the treasurer's signature. All claims against the district ~~shall~~ must be certified the same as claims filed against a county. The board may require any claim to be verified. The secretary of the district may administer ~~oaths~~ an oath to the person verifying ~~such~~ a claim.

SECTION 18. AMENDMENT. Section 61-08-34 of the North Dakota Century Code is amended and reenacted as follows:

61-08-34. Refunding irrigation district bonds - Negotiating new bonds. Each irrigation district in this state that has ~~heretofore~~ issued or shall ~~hereafter~~ issue bonds or improvement warrants purporting to have been issued for any purpose authorized by law, which bonds or improvement warrants have been ~~actually~~ sold and delivered to purchasers for value and constitute an existing indebtedness, may at any time after ~~maturity~~ or before maturity; ~~with the consent of the holder,~~ refund the same and issue and negotiate new sell refunding bonds for the amount of such indebtedness or any part thereof in amounts, bearing interest at rates, and maturing on dates as determined by the board.

SECTION 19. AMENDMENT. Section 61-08-35 of the North Dakota Century Code is amended and reenacted as follows:

61-08-35. Procedure used in issuing refunding bonds. When in the judgment of the board of directors of an irrigation district it ~~shall be to~~ is in the best interests of ~~such~~ the irrigation district to issue its negotiable bonds in the name of such irrigation district for the purpose of refunding or paying outstanding ~~bonded~~ indebtedness; ~~or any issue of bonded indebtedness of such irrigation district,~~ as enumerated provided in section 61-08-34, refunding bonds may be issued pursuant to resolutions duly passed at a regular or special meeting of ~~such~~ the board of directors. Such The refunding bonds may be sold at public or private sale and must be signed in the same manner as the bonds to be refunded or by ~~such~~ the officers of the irrigation district ~~issuing the same~~ as may be designated in the resolutions providing for their issuance.

SECTION 20. AMENDMENT. Section 61-08-39 of the North Dakota Century Code is amended and reenacted as follows:

61-08-39. Assessments - Proceeds - Levy. All assessments made by an irrigation district for the payment of the bonds or improvement warrants to be refunded ~~shall~~ must inure to the benefit of the holders of the refunding bonds and the proceeds of ~~such~~ the assessments ~~shall~~ must be utilized for the purpose of paying the interest and principal of ~~said~~ the refunding bonds, and the board of directors of the irrigation district shall levy an assessment against the lands of the district, as provided by law for levying assessments, sufficient to pay the interest on ~~such~~ the

refunding bonds and to create a sinking fund to retire ~~such~~ the refunding bonds at maturity.

SECTION 21. Two new sections to chapter 61-08 of the North Dakota Century Code are created and enacted as follows:

Issuance of revenue bonds. The acquisition, construction, reconstruction, improvement, betterment, or extension of any revenue producing facility, and the issuance of revenue bonds in anticipation of the collection of the revenues of the facility, may be authorized by resolution adopted by the affirmative vote of a majority of the board of directors. The amount of the bonds authorized may not exceed the amount authorized by the electors of the district as provided in this chapter.

Payment and security for revenue bonds. Revenue bonds issued under this chapter may not be payable from nor charged upon any funds other than the revenue pledged to the payment of the bonds, nor is the district issuing the bonds subject to any pecuniary liability on the bonds. A holder of the bonds does not have the right to compel the levy of special assessments to pay the bonds or the interest, or to enforce payment of the bonds against any property of the district other than property pledged as security for the bonds. Each revenue bond issued under this chapter must recite in substance that the bond, including interest on the bond, is payable solely from the revenue pledged to the payment of the bond, and that the bond does not constitute a debt of the district within the meaning of any constitutional or statutory limitation.

SECTION 22. AMENDMENT. Section 61-09-13 of the North Dakota Century Code is amended and reenacted as follows:

61-09-13. Board may borrow additional funds if levy of annual assessment is insufficient for district - Limitations. If after the levy of the annual assessment for the current year the board finds that because of some unusual or unforeseen cause funds raised through the collection of ~~such~~ the assessment, and from other sources, will not be sufficient for the proper maintenance and operation of the district, and the irrigation works ~~therein~~ of the district, the board may borrow additional funds needed to an amount not to exceed ~~one dollar~~ twenty dollars per acre [.40 hectare] for the irrigable lands within the district and may pledge the credit of the district for the payment of the ~~same loan~~, or the board may issue ~~and register warrants~~ bonds in anticipation of further collections. The board shall include in the levy for the ensuing year the amount required to pay ~~such~~ the loan or to retire ~~such warrants~~ the bonds.

SECTION 23. AMENDMENT. Section 61-09-14 of the North Dakota Century Code is amended and reenacted as follows:

61-09-14. ~~Warrants~~ Borrowing in excess of ninety percent of levy prohibited - Additional levy permissible - Transfer of balance in fund. ~~No~~ An irrigation district, on account of expenses of operation and maintenance and to pay the current expenses of the district, in any year ~~shall issue warrants~~ may not borrow in excess of ninety percent of the levy of assessments for ~~such~~ that year. In case of due and outstanding obligations of the district on account of current expenses and expenses of operation and maintenance contracted ~~prior to~~ before the year in which the levy is made, the district board ~~shall have power to~~ may make an additional levy, not to exceed ~~one dollar~~ twenty dollars per acre [.40 hectare], upon all irrigable lands within the district, to create a special fund for the payment of ~~such~~ the past due obligations. Whenever the claims or obligations against any fund for any year are

fully paid, the board ~~shall have the power to~~ may transfer any unused balance to any fund for any preceding or succeeding year.

SECTION 24. REPEAL. Sections 61-08-10, 61-08-11, 61-08-16, 61-08-17, 61-08-18, 61-08-19, 61-08-20, 61-08-21, 61-08-33, 61-08-36, 61-08-37, and 61-08-38 of the North Dakota Century Code are repealed.

Approved March 23, 1997

Filed March 24, 1997

CHAPTER 519

SENATE BILL NO. 2080

(Natural Resources Committee)
(At the request of the State Engineer)

EMERGENCY DAM PERMITS

AN ACT to amend and reenact section 61-16.1-38 of the North Dakota Century Code, relating to issuing temporary permits for dikes, dams, or other devices in cases of emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.1-38 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-38. Permit to construct or modify dam, dike, or other device required - Penalty - Emergency. No dikes, dams, or other devices for water conservation, flood control regulation, watershed improvement, or storage of water which are capable of retaining, obstructing, or diverting more than twelve and one-half acre-feet [15418.52 cubic meters] of water ~~shall~~ may be constructed within any district except in accordance with the provisions of this chapter. An application for the construction of any dike, dam, or other device, along with complete plans and specifications, ~~shall~~ must be presented first to the state engineer. After receipt, the state engineer shall consider the application in such detail as the state engineer deems necessary and proper. The state engineer shall refuse to allow the construction of any unsafe or improper dike, dam, or other device which would interfere with the orderly control of the water resources of the district, or may order such changes, conditions, or modifications as in the judgment of the state engineer may be necessary for safety or the protection of property. Within forty-five days after receipt of the application, except in unique or complex situations, the state engineer shall complete the state engineer's initial review of the application and forward the application, along with any changes, conditions, or modifications, to the water resource board of the district within which the contemplated project is located. The board thereupon shall consider, within forty-five days, the application, and suggest any changes, conditions, or modifications to the state engineer. If the application meets with the board's approval, the board shall forward the approved application to the state engineer. The state engineer shall make the final decision on the application and forward that decision to the applicant and the local water resource board. The state engineer may issue temporary permits for dikes, dams, or other devices in cases of an emergency. Any person constructing a dam, dike, or other device, which is capable of retaining, obstructing, or diverting more than twelve and one-half acre-feet [15418.52 cubic meters] of water, without first securing a permit to do so, as required by this section, ~~shall be~~ is liable for all damages proximately caused by ~~such~~ the dam, dike, or other device, and ~~shall be~~ is guilty of a class B misdemeanor.

Approved March 20, 1997
Filed March 20, 1997

CHAPTER 520**HOUSE BILL NO. 1086**

(Representatives Jacobs, Kempenich, Kerzman, Martin)
(Senators Urlacher, Krauter)

SOUTHWEST WATER AUTHORITY EXPENDITURES

AN ACT to amend and reenact section 61-24.5-14 of the North Dakota Century Code, relating to expenditures by the southwest water authority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-24.5-14 of the North Dakota Century Code is amended and reenacted as follows:

61-24.5-14. County treasurer or city auditor to collect and remit district taxes - District fund established - Nonreverter - Disbursements. The treasurer of each county in which a mill levy has been certified shall collect the taxes, together with interest and penalty thereon, if any, in the same manner as the general taxes are collected, and shall pay over to the treasurer of the authority, on demand, all taxes, interest, and penalties so collected, and shall forthwith notify the secretary of the authority of such payment. Expenditures must be made approved by the board of directors ~~upon vouchers signed by the chairman of the board.~~

Approved March 25, 1997
Filed March 26, 1997

CHAPTER 521

HOUSE BILL NO. 1058

(Legislative Council)
(Government Organization Committee)

STATE WATER POLLUTION CONTROL BOARD

AN ACT to amend and reenact sections 20.1-13-05, 61-28-02, 61-28-03, 61-28-05, and 61-28-07 of the North Dakota Century Code, relating to the powers, procedures, and composition of the state water pollution control board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-13-05 of the North Dakota Century Code is amended and reenacted as follows:

20.1-13-05. Equipment - Penalty.

1. Every vessel must have aboard:
4. ~~to 3.~~ Repealed by S.L. 1975, ch. 214, § 16.
4. a. If equipped with a marine toilet or other similar device for the disposition of sewage or other wastes, only that type of marine toilet equipped with a treatment device meeting standards established by the state water pollution control board. The ~~board~~ department of health shall furnish a list of the types of treatment devices currently available and considered acceptable for use with marine toilets under this ~~subsection~~ subdivision. No person owning or operating a vessel upon the waters of this state may use, operate, or permit the use or operation of any marine toilet or similar device unless it is approved under this ~~subsection~~ subdivision. No person may discharge into the waters of this state, directly or indirectly from a vessel, any untreated sewage or other wastes. No container of untreated sewage or other wastes may be placed, left, discharged, or caused to be placed, left, or discharged in or near any waters of this state from a vessel in such a manner or quantity as to create a nuisance or health hazard, or pollute such waters.
5. b. Such additional equipment designed to promote the safety of navigation and of persons as the game and fish department may find appropriate and for which it has provided in its rules ~~and regulations~~.
6. 2. No person may operate or give permission for the operation of a vessel ~~which that~~ which that is not equipped as required by this section ~~or modification thereof~~.
7. 3. Any person who violates this section is guilty of a class 2 noncriminal offense.

SECTION 2. AMENDMENT. Section 61-28-02 of the North Dakota Century Code is amended and reenacted as follows:

61-28-02. Definitions. For the purposes of As used in this chapter, the following words and phrases shall have the meanings ascribed to them in this section unless the context otherwise requires:

1. "Board" means the state water pollution control board.
2. "Department" means the state department of health.
3. "Discharge" means the addition of any waste to state waters from any point source.
4. "Disposal system" means a system for disposing of wastes, either by surface or underground methods, and includes sewerage systems, treatment works, disposal wells, and other systems.
5. "Person" ~~means the state or any agency or institution thereof, includes any municipality, political subdivision, public or private corporation, limited liability company, individual, partnership, association, any agency or instrumentality of the United States government, or other public or private entity, and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation such entity.~~
6. "Point source" means any discernible, confined, and discrete conveyance, including; ~~but not limited to;~~ any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which wastes are or may be discharged.
7. "Pollution" means the manmade or man-induced alteration of the physical, chemical, biological, or radiological integrity of any waters of the state.
8. "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other structures, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.
9. "Treatment works" means any plant or other works used for the purpose of treating, stabilizing, or holding wastes.
10. "Wastes" means all substances which cause or tend to cause pollution of any waters of the state, including dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radiological materials, heat, wrecked or discarded equipment, rock, sand, and cellar dirt and industrial, municipal, and agricultural pollution discharged into any waters of the state.
11. "Waters of the state" means all waters within the jurisdiction of this state including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, and all other bodies or accumulations of water on or under the surface of the earth, natural or artificial, public or private, situated wholly or partly within or bordering upon the state, except those private waters ~~which that~~ do not combine or effect a junction with natural surface or underground waters just defined.

SECTION 3. AMENDMENT. Section 61-28-03 of the North Dakota Century Code is amended and reenacted as follows:

61-28-03. State water pollution prevention agency - Board.

1. There is hereby created and established a The state water pollution control board. ~~The board shall consist~~ consists of ~~ten~~ thirteen persons. ~~It shall~~ The board must include the ~~heads of the departments of state health officer, water conservation state engineer, director of the game and fish department, the state geologist, and six citizen~~ nine other members appointed by the governor, three of whom must be representatives of production agriculture, two of whom must be representatives of manufacturing and processing, one of whom must be a representative of the solid fuels industry, one of whom must be a representative of the fluid and gas fuels industry, one of whom must be a representative of the environmental sciences, and one of whom must be a representative of county or municipal government. Municipal, industrial, and wildlife interests shall each be represented by a citizen member. Agricultural interests shall be represented by three citizen members. The executive secretary of the board shall be the chief sanitary engineer of the department.
2. Of the ~~six~~ nine members appointed by the governor, each shall serve six-year terms; ~~except that of those four first appointed, two shall be appointed for three years, and two shall be for six years.~~ The governor may fill any vacancy in the appointed membership of the board, and may remove any appointed member for cause.
3. The board shall select its own chairman from among its members. The heads of departments on the board may, by official order filed with the executive secretary of the board, designate a representative of the person's department to perform the duties of the member making the designation. ~~Such~~ That person, if any, ~~designated pursuant to this section,~~ shall have the powers and be subject to the duties and responsibilities of the appointing office.
4. All members of the board shall serve without compensation for their duties, but ~~shall~~ must be reimbursed for necessary travel and other expenses incurred in the performance of their official duties. Reimbursement ~~shall~~ must be paid out of funds allocated to the department for water pollution control.
5. The department shall provide the board with copies of maps, plans, documents, studies, surveys, and all other necessary information in order that the board may be fully cognizant of the current status of water pollution and its control in the state and to enable the board to advise the department in development of programs for the prevention and control of pollution of waters in the state.
6. The board shall hold at least one regular meeting each year, and any additional meetings the chairman deems necessary, at a time and place to be determined by the chairman. Upon written request of any three members the chairman shall call a special meeting. Seven members constitute a quorum.

7. The board shall consider and make recommendations regarding any rules and standards relating to water quality or pollution, ground water protection, and safe drinking of water that are adopted by the department. The department may not take final action on any rules or standards without consulting the board. The board shall consider any other matters related to the purposes of this chapter and may make recommendations on its own initiative to the department concerning the administration of this chapter.

SECTION 4. AMENDMENT. Section 61-28-05 of the North Dakota Century Code is amended and reenacted as follows:

61-28-05. Rules; ~~regulations~~, and standards. The department may adopt rules ~~and regulations~~ and, jointly with the ~~state water pollution control~~ board, shall hold public hearings ~~to consider~~ regarding the adoption, amendment, or repeal of rules; ~~regulations~~, and standards of quality of the waters of the state as provided in this chapter; ~~and notice of such public hearing or hearings shall be given by publication of a notice of such hearing or hearings in each of the official county newspapers within the state of North Dakota by at least two publications, one week apart, the last publication being at least ten days prior to said hearing and which hearing shall be held in the state capitol in Bismarek, at which hearings interested parties may present witnesses and other evidence pertinent and relevant to proposed rules, regulations, and standards, and the state water pollution control board shall consider any other matters related to the purposes of this chapter and shall advise the department concerning the administration of this chapter.~~

SECTION 5. AMENDMENT. Section 61-28-07 of the North Dakota Century Code is amended and reenacted as follows:

61-28-07. Proceedings. Any proceeding under this chapter for:

1. ~~Issuance~~ issuance or modification of rules ~~and regulations~~, including emergency orders relating to control of water pollution; or
2. ~~Determining~~ for determining compliance with or violation with the provisions of this chapter, or adoption of any rule; ~~regulation~~; or order issued ~~thereunder~~ under this chapter by the department;

~~shall, must~~ be conducted in accordance with ~~the provisions of~~ chapter 28-32 ~~and any.~~ Any person claiming to be aggrieved or adversely affected by actions taken, or by any rule; ~~regulation~~, or order issued under this chapter may request a hearing by the department. There ~~shall be~~ is a right of appeal to the district court from any adverse ruling by the department. Where an emergency exists requiring immediate action to protect the quality of water for legitimate uses and the public health and welfare, the department ~~may~~, without further notice or hearing, may issue an order reciting the existence of ~~such~~ the emergency and requiring that such immediate action be taken as is necessary to meet this emergency. Notwithstanding ~~any provision~~ of this chapter, ~~such~~ the order ~~shall be~~ is effective immediately. Any person to whom ~~such~~ the order is directed shall comply ~~therewith~~ immediately, but on application to the department ~~shall~~ must be afforded a hearing before the department ~~and the state water pollution control board~~ within ten days. On the basis of ~~such~~ that hearing, the emergency orders ~~shall~~ must be continued, modified,

or revoked within thirty days after ~~such~~ the hearing. In the alternative, upon receipt of evidence that a pollution source or combination of sources is presenting an imminent and substantial endangerment to the health of persons or to the welfare of persons where ~~such~~ the endangerment to welfare is to the livelihood of ~~such~~ those persons, the department may bring suit on behalf of the state in the district court for the county in which the violation is taking place to immediately restrain any person causing or contributing to the alleged pollution to stop the discharge of pollutants causing or contributing to ~~such~~ the pollution, or to take such other action as may be necessary.

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 522

SENATE BILL NO. 2362

(Senators Heitkamp, G. Nelson, Wogsland)
(Representative Dorso)

DRINKING WATER TREATMENT REVOLVING LOAN FUND

AN ACT to create and enact two new sections to chapter 61-28.1 of the North Dakota Century Code, relating to a drinking water treatment revolving loan fund; to amend and reenact section 61-28.1-03 and subsections 2 and 3 of section 61-28.1-10 of the North Dakota Century Code, relating to the powers and duties of the state department of health; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-28.1-03 of the North Dakota Century Code is amended and reenacted as follows:

61-28.1-03. Powers and duties of department. The department may exercise the following powers and shall have the following duties:

1. Administer and enforce a safe drinking water program pursuant to the provisions of this chapter.
2. Provide technical assistance on request to ~~municipalities~~ public water systems of the state and other persons, and cooperate with appropriate federal agencies.
3. Advise, consult, and cooperate with other public agencies and with affected groups and industries.
4. Issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial process.
5. Maintain an inventory of public water systems within the state, which inventory may consist of such information as the department deems necessary.
6. Conduct sanitary surveys of public water systems within the state.
7. Adopt rules and regulations relating to maximum contaminant levels, monitoring and analytical requirements and reporting, public notification, and recordkeeping which the department determines are necessary to protect public health and welfare.
8. Adopt rules and regulations relating to the siting, construction, operation, and modification of public water systems which the department determines are necessary to prevent violation of maximum contaminant levels.

9. Require the submission of plans, specifications, and such other information as it deems necessary.
10. Establish a plan for the provision of safe drinking water under emergency circumstances.
11. Require each supplier of water to keep such records and make such reports to the department as it may deem necessary.
12. Establish a schedule of fees that may be charged by the department for laboratory tests conducted at the request of any supplier of water; such fees shall be deposited in the general fund.
13. Require any supplier of water to notify the users of such public water system of any violations of any provision of this chapter, any regulation, the terms or conditions of any approval, any variance or exemption, or any order issued by the department.
14. Request and accept grants of funds or services from any federal or state agency, or any other source, public or private, and to administer such grants in accordance with any terms or conditions thereof. Any such grants received shall be used only for the purposes for which they are made.
15. Designate the state department of health as the state safe drinking water agency for all purposes of the federal Safe Drinking Water Act and is authorized to take all actions necessary and appropriate to secure for the state the benefit of such Act and any grants made thereunder.
16. Ensure that all new public water systems, excluding those that principally provide service to transients, commencing operation after October 1, 1999, demonstrate technical, managerial, and financial capacity to comply with all rules adopted under this chapter which are in effect, or will be in effect, on the date of commencement of operations.
17. Develop and implement a strategy to assist all public water systems in acquiring and maintaining technical, managerial, and financial capability to comply with all rules adopted under this chapter.

SECTION 2. AMENDMENT. Subsections 2 and 3 of section 61-28.1-10 of the North Dakota Century Code are amended and reenacted as follows:

2. Any person who willfully violates this chapter or any regulation or order of the department shall be punished by a civil penalty of not more than ten thousand dollars per day of violation or an administrative penalty as follows:
 - a. One thousand dollars per day per violation in the case of a system serving a population of more than ten thousand.
 - b. An amount adequate to ensure compliance in the case of any system not under subdivision a.
3. Any person who violates this chapter, or any rule implementing this chapter, and any person who violates any order issued by the department under this chapter is subject to a civil penalty not to exceed

five thousand dollars per day of violation or an administrative penalty as follows:

- a. One thousand dollars per day per violation in the case of a system serving a population of more than ten thousand.
- b. An amount adequate to ensure compliance in the case of any system not under subdivision a.

SECTION 3. A new section to chapter 61-28.1 of the North Dakota Century Code is created and enacted as follows:

Drinking water treatment revolving loan fund - Purposes - Establishment. To coordinate funding for public water systems in North Dakota, there is established a drinking water treatment revolving loan fund to be administered by the department. The loan fund is also authorized under section 1452(a) of the federal Safe Drinking Water Act, as amended. Grants from the federal government or its agencies, including the United States environmental protection agency, allotted to the state for the capitalization of the drinking water treatment revolving loan fund, and required state matching funds must be deposited in the drinking water treatment revolving loan fund in compliance with the terms of the grants. The principal of the grants must be available in perpetuity for providing financial assistance as allowed under the Safe Drinking Water Act. To the extent amounts in the revolving loan fund are not required for current obligations or expenditures, these amounts must be invested in interest-bearing obligations.

SECTION 4. A new section to chapter 61-28.1 of the North Dakota Century Code is created and enacted as follows:

Department - Powers and duties - Administration. The department has the following powers and duties and shall administer the drinking water treatment revolving loan fund as follows:

1. To apply for and accept grants of money from the United States environmental protection agency or other federal agencies which must be deposited in the drinking water treatment revolving loan fund to be used for purposes authorized under the Safe Drinking Water Act, including the following:
 - a. To provide loans or loan guaranties, or other financial assistance, to community water systems and nonprofit noncommunity water systems eligible for assistance from the revolving loan fund.
 - b. As a source of revenue and security for the payment of principal and interest on bonds issued by the state through the North Dakota municipal bond bank if the bond proceeds are deposited in the revolving loan fund.
 - c. To buy or refinance debt obligations issued after July 1, 1993, to finance a project eligible for assistance from the revolving loan fund.
 - d. To guarantee or purchase insurance for debt obligations issued to finance a project eligible for assistance from the revolving loan fund.

- e. To provide other financial and technical assistance and to make any other expenditure authorized under the Safe Drinking Water Act.
 - f. To earn interest before the disbursement of financial or technical assistance.
 - g. To pay administrative expenses associated with the revolving loan fund as authorized under the Safe Drinking Water Act.
2. To administer the drinking water treatment revolving loan fund as established. The department may enter into contracts and other agreements in connection with the operation of the drinking water treatment revolving loan fund to the extent necessary or convenient for the implementation of the drinking water treatment revolving loan fund. The department may combine the financial administration of the drinking water treatment revolving loan fund and the financial administration of the water pollution control revolving loan fund established under chapter 61-28.2. The department may cross-collateralize the drinking water treatment revolving loan fund and the water pollution control revolving loan fund as authorized by the administrator of the federal environmental protection agency under the Safe Drinking Water Act.
 3. To administer and disburse funds with the approval of the state water commission and in accordance with section 1452(a) of the federal Safe Drinking Water Act [42 U.S.C. 300j], as amended.
 4. To establish assistance priorities and to expend grant funds pursuant to the priority list for the drinking water treatment revolving loan fund, after consulting with and obtaining the approval of the state water commission.
 5. To adopt rules necessary for administering the drinking water treatment revolving loan fund.

The governor may transfer grant funds from the drinking water treatment revolving loan fund to the water pollution control revolving loan fund established by chapter 61-28.2 and from the water pollution control revolving loan fund to the drinking water treatment revolving loan fund, as authorized by the Safe Drinking Water Act.

Approved April 9, 1997
Filed April 10, 1997

CHAPTER 523

HOUSE BILL NO. 1102 (Representative DeKrey)

DRAINAGE PERMITS

AN ACT to amend and reenact section 61-32-03 of the North Dakota Century Code, relating to drainage permits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-32-03 of the North Dakota Century Code is amended and reenacted as follows:

61-32-03. Permit to drain waters required - Penalty. Any person, before draining ~~water from~~ a pond, slough, ~~or~~ lake, or sheetwater, or any series thereof, which has a watershed area comprising eighty acres [32.37 hectares] or more, shall first secure a permit to do so. The permit application must be submitted to the state engineer. The state engineer shall refer the application to the water resource district or districts within which is found a majority of the watershed or drainage area of the pond, slough, ~~or~~ lake, or sheetwater for consideration and approval, but the state engineer may require that applications proposing drainage of statewide or interdistrict significance be returned to the state engineer for final approval. A permit may not be granted until an investigation discloses that the quantity of water which will be drained from the pond, slough, ~~or~~ lake, or sheetwater, or any series thereof, will not flood or adversely affect downstream lands. If the investigation shows that the proposed drainage will flood or adversely affect lands of downstream landowners, the water resource board may not issue a permit until flowage easements are obtained. The flowage easements must be filed for record in the office of the register of deeds of the county or counties in which the lands are situated. An owner of land proposing to drain shall undertake and agree to pay the expenses incurred in making the required investigation. This section does not apply to the construction or maintenance of any existing or prospective drain constructed under the supervision of a state or federal agency, as determined by the state engineer.

Any person draining, or causing to be drained, ~~water of~~ a pond, slough, ~~or~~ lake, or sheetwater, or any series thereof, which has a watershed area comprising eighty acres [32.37 hectares] or more, without first securing a permit to do so, as provided by this section, is liable for all damage sustained by any person caused by the draining, and is guilty of an infraction. ~~When temporary ponding of water occurs due to spring runoff or heavy rains, an area not in excess of eighty acres [32.37 hectares] may be drained without first securing a permit.~~ As used in this section, sheetwater means shallow water that floods land not normally subject to standing water. The state engineer may adopt rules for temporary permits for emergency drainage.

Approved March 10, 1997
Filed March 10, 1997

CHAPTER 524

SENATE BILL NO. 2239

(Senators Fischer, G. Nelson, Robinson)
(Representatives Olson, Soukup)

DEVILS LAKE OUTLET MANAGEMENT ADVISORY COMMITTEE

AN ACT to provide for creation of a Devils Lake outlet management advisory committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Devils Lake outlet management advisory committee - Members - Terms - Vacancies. The Devils Lake outlet management advisory committee consists of the state engineer or the state engineer's designee, one member appointed by the Red River joint water resource board, one member appointed by the Devils Lake joint water resource board, one county commissioner from Ramsey County appointed by the Ramsey County board of county commissioners, one county commissioner from Benson County appointed by the Benson County board of county commissioners, a representative of the Spirit Lake Nation appointed by the tribal council of the Spirit Lake Nation, and three members appointed by the governor. The members appointed by the governor must represent the interests affected by downstream impacts of operating an outlet to Devils Lake. An appointed member may designate a substitute to serve in that person's capacity at such meetings that person may be unable to attend. Except for the first term, all appointed members serve for a term of four years or until their successors are appointed and qualified. For the first term, two of the members from the Devils Lake basin must serve two-year terms and two of the other appointed members must serve two-year terms, provided that at least one member representing the interests affected by downstream impacts of operating an outlet to Devils Lake must remain on the committee for a four-year term. The chairman shall hold the first meeting within two months after the effective date of this Act. Terms expire on the first day of July. Each appointed member must be a qualified elector of the state and is subject to removal by judicial procedure. A vacancy must be filled in the same manner as original appointments for the remainder of the unexpired term. Before entering upon the discharge of official duties, each appointed member shall take, subscribe, and file with the secretary of state the oath prescribed for civil officers.

SECTION 2. Chairman - Quorum - Meetings. The state engineer is the chairman of the committee. A majority of the members of the committee constitutes a quorum. The committee may hold meetings at the call of the chairman or at the request of three members of the committee at such times and places as the chairman provides.

³ **SECTION 3. Compensation and expenses.** Each member appointed by the governor is entitled to receive the same compensation per day and must be

³ Section 61-36-03 was also amended by section 36 of Senate Bill No. 2052, chapter 432.

reimbursed for expenses, while attending meetings of the committee, in the same amounts as provided for in section 54-35-10 for members of the legislative council.

SECTION 4. Development of an annual operating plan. The committee shall develop an annual operating plan for the operation of the Devils Lake outlet. The plan must specify the lake elevation at which pumping will take place. In developing the annual operating plan, the committee shall consider spring runoff forecasts, weather forecasts, summer flooding potential, downstream impacts including water quality and streambank erosion, flooding, and any other factors the committee determines should be considered. The committee must recommend a plan of operation to the state water commission within two weeks following the first official numeric national weather service spring snowmelt flood outlook. If a majority of members are unable to agree on a plan, one or more minority plans may be submitted to the state water commission. The state water commission may approve, recommend changes, or make changes to the annual operating plan.

Approved April 2, 1997

Filed April 3, 1997

WEAPONS

CHAPTER 525

SENATE BILL NO. 2262

(Senators Christmann, B. Stenehjem)
(Representatives Brusegaard, Gerntholz, Koppelman)

CONCEALED WEAPONS LICENSE RECIPROCITY

AN ACT to create and enact a new section to chapter 62.1-04 of the North Dakota Century Code, relating to reciprocity for concealed weapons licenses; and to amend and reenact subsection 3 of section 62.1-02-10, subdivision a of subsection 2 of section 62.1-03-01, and section 62.1-04-04 of the North Dakota Century Code, relating to concealed weapons licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 62.1-02-10 of the North Dakota Century Code is amended and reenacted as follows:

3. Any person possessing a valid North Dakota concealed weapons license; or a valid license issued by another state authorizing the person to carry a dangerous weapon concealed if that state permits a holder of a valid North Dakota concealed weapons license to carry a dangerous weapon concealed in that state without obtaining a similar license from that state, except while that person is in the field engaged in hunting or trapping activities.

SECTION 2. AMENDMENT. Subdivision a of subsection 2 of section 62.1-03-01 of the North Dakota Century Code is amended and reenacted as follows:

- a. Any person possessing a valid North Dakota concealed weapons license or a valid license issued by another state authorizing the person to carry a dangerous weapon concealed if that state permits a holder of a valid North Dakota concealed weapons license to carry a dangerous weapon concealed in that state without obtaining a similar license from that state.

SECTION 3. AMENDMENT. Section 62.1-04-04 of the North Dakota Century Code is amended and reenacted as follows:

62.1-04-04. Producing license on demand. Every person while carrying a concealed firearm or dangerous weapon for which a license to carry concealed is required, shall have on one's person the license issued by this or another state and shall give it to any law enforcement officer for an inspection upon demand by the officer. The failure of any person to give the license to the officer is prima facie evidence that the person is illegally carrying a firearm or dangerous weapon concealed.

SECTION 4. A new section to chapter 62.1-04 of the North Dakota Century Code is created and enacted as follows:

Reciprocity. A person who has a valid license issued by another state to carry a concealed firearm or dangerous weapon in that state and whose state grants to residents of this state the right to carry a concealed firearm or dangerous weapon without requiring a separate license to carry a concealed firearm or dangerous weapon issued by that state may carry, subject to the provisions of this state's law, a concealed firearm or dangerous weapon in this state, and the other state's license is valid in this state.

Approved March 25, 1997

Filed March 26, 1997

WEIGHTS, MEASURES, AND GRADES

CHAPTER 526

SENATE BILL NO. 2039

(Legislative Council)
(Government Organization Committee)

WEIGHING AND MEASURING DEVICE TESTING FEES

AN ACT to amend and reenact section 64-02-10 of the North Dakota Century Code, relating to fees collected by the public service commission for testing or calibrating weighing and measuring devices.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 64-02-10 of the North Dakota Century Code is amended and reenacted as follows:

64-02-10. Fees to test or calibrate weighing and measuring devices. The commission shall collect the following fees to:

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| 1. Test railroad track or truck scale | \$97.00 |
| 2. Test livestock and vehicle scale | 97.00 |
| 3. Test livestock scale if the sales
ring or buying station scale owner
transports to the scale and furnishes
all test weights and manpower needed
to properly test the scale | 55.00 |
| 4. Test auxiliary beam on livestock,
motor truck, motor truck dump scale | 19.00 |
| 5. Test overhead monorail, track, hopper,
dormant, deck, and hanging scale | 43.00 |
| 6. Test movable platform scale | 8.00 |
| 7. Test counter or computing scale | 8.00 |
| 8. <u>Test hanging scale of fifty pound</u>
<u>[22.68 kilograms] capacity</u> | |

	<u>or less</u>	<u>8.00</u>
9.	<u>9.</u> Test board of cloth measure	8.00
9.	10. <u>10.</u> Test liquid or gas computing pump <u>a retail motor fuel device</u>	8.00
40.	11. <u>11.</u> Test or calibrate weighing and measuring standards, per metrologist, per quarter hour or fraction thereof	12.50
44.	12. <u>12.</u> Test mobile delivery gasoline and fuel oil meter	19.00
42.	13. <u>13.</u> Test gasoline, LPG, or fuel oil meter on common carrier pipelines, or any other meter used in loading railway cars, transports, or other conveyances	43.00
43.	14. <u>14.</u> Test propane, ag chemical, or liquid fertilizer meter	31.00
44.	15. <u>15.</u> Test truck tank	61.00
45.	16. <u>16.</u> Test crane scale	61.00
46.	17. <u>17.</u> Test or calibrate weighing and measuring devices other than the above and those set by rule, per inspector per quarter hour or fraction thereof	9.00
47.	18. <u>18.</u> Witnessing any of the above tests	Fifty percent of the applicable fee

When a rejected weighing or measuring device has been reconditioned or replaced by new equipment, it must be retested and certified before being put into use except as otherwise provided by rule. The fee for retest and certification is the same as for the first test and certification.

When a test of a weighing or measuring device is required in addition to the regularly scheduled annual test, ~~a the commission shall charge of sixty cents per mile [1.61 kilometers] will be made unless a fee equal to the cost of operating the motor vehicle; including the testing equipment necessary to perform the test weighs less than ten thousand pounds [4535.92 kilograms] gross. If the motor vehicle weighs less than ten thousand pounds [4535.92 kilograms] gross, a charge of thirty-five cents per mile [1.61 kilometers] will be made, and all used in conducting the test. The mileage charges are, as determined by the commission, must be in addition to the regular test fee and calculated to cover the costs of the additional travel.~~ Where a test has been requested and the person requesting it fails to appear or to have the weighing or measuring device ready for testing at the arranged time, there is a charge of nine dollars a quarter hour for the time between the arranged time and the time at which the test can begin.

Approved March 11, 1997

Filed March 13, 1997

WORKERS' COMPENSATION

CHAPTER 527

HOUSE BILL NO. 1269

(Representative Berg)

(Senator Mutch)

WORKERS' COMPENSATION DEFINITIONS AND PRESUMPTIONS

AN ACT to create and enact a new section to chapter 65-01 of the North Dakota Century Code, relating to the presumption that certain conditions of paid firefighters and law enforcement officers are work-related; to amend and reenact sections 65-01-02, 65-01-03, 65-01-11, 65-01-15, and 65-07-03 of the North Dakota Century Code, relating to definitions, the presumption of being an employee for purposes of workers' compensation, and the burden of proof in workers' compensation matters; and to provide for a study of wage-loss benefits structure.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ **SECTION 1. AMENDMENT.** Section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

65-01-02. Definitions. In this title:

1. "Acute care" means a short course of intensive diagnostic and therapeutic services provided immediately following a work injury with a rapid onset of pronounced symptoms.
2. "Adopted" or "adoption" refers only to a legal adoption effected prior to the time of the injury.
- ~~2.~~ 3. "Artificial members" includes only such devices as are substitutes for, and not mere aids to, a natural part, organ, limb, or other part of the body. The term does not include eyeglasses or contact lenses unless the eye is, or eyes are, injured as a result of a compensable injury, and such injury causes a change in sight which requires fitting of eyeglasses or contact lenses not previously worn by the injured worker, or requires a change in existing prescription.
- ~~3.~~ 4. "Artificial replacements" means mechanical aids including braces, belts, casts, or crutches as may be reasonable and necessary due to compensable injury. ~~The term does not include:~~

¹ Section 65-01-02 was also amended by section 1 of House Bill No. 1260, chapter 530, and section 1 of House Bill No. 1440, chapter 528.

- a. Personal items that are for the injured employee's personal use or hygiene, including hand massages, toothbrushes, slippers, shampoo, and soap;
 - b. Any product or item such as clothing or footwear unless the items are considered orthopedic devices and are prescribed by the treating doctor or health care provider;
 - c. All items of furniture except hospital beds, shower stools, wheelchairs, or whirlpools if prescribed by the treating doctor or health care provider;
 - d. Vitamins and food supplements except in those cases where the injury causes severe dietary problems, where the injury results in the employee's paraplegia or quadriplegia, or where the employee becomes wheelchair-bound due to the injury;
 - e. Eye exams unless there is a reasonable potential for injury to the employee's eyes as a result of the injury;
 - f. Home gym or exercise equipment unless the bureau otherwise orders;
 - g. Memberships or monthly dues to health clubs, unless the bureau orders otherwise;
 - h. Private hospital or nursing home rooms except in cases of extreme medical necessity and only when directed by the attending doctor. If the employee desires better accommodations than those ordered by the attending doctor, the difference in cost will be paid by the employee;
 - i. Serological tests (VDRL and RPR) for syphilis or any other venereal disease tests, pregnancy tests, or any other routine tests unless clearly necessitated by the injury; and
 - j. Aids or programs primarily intended to help the employee lose weight or stop smoking.
4. 5. "Average weekly wage" means the weekly wages the employee was receiving from all employments at the time of injury date of first disability. The average weekly wage as determined under this section must be rounded to the nearest dollar. In cases where the employee's wages are not fixed by the week, they must be determined by using the first applicable formula from the schedule below:
- a. For seasonal employment, one-fiftieth of the total wages from all occupations during the twelve months preceding the injury or during the tax year preceding the injury, or during the three tax years preceding the injury, whichever is highest and for which accurate, reliable, and complete records are readily available.
 - b. The "average weekly wage" of a self-employed employee is determined by the following formula: net profits based on preceding tax year or preceding fifty-two weeks whichever is higher if accurate, reliable, and complete records for those fifty-two weeks

are readily available, plus depreciation, meal and travel expenses, and any expenses chargeable to use of personal residence as allowed under the federal tax laws.

- b. c. Hourly or daily rate multiplied by number of hours or days worked per seven-day week.
 - e. d. Monthly rate multiplied by twelve months and divided by fifty-two weeks.
 - e. e. Biweekly rate divided by two.
 - e. ~~In seasonal employment, the average weekly wage is one-fiftieth of the total wages the employee has earned from all occupations during the twelve calendar months immediately preceding the injury or one-fiftieth of the average annual income for the three-year period immediately preceding the injury, whichever is greater.~~
 - f. ~~If the average weekly wage of an employee cannot be ascertained, the wage for the purposes of calculating compensation is the~~ The usual wage paid other employees engaged in similar occupations where the wages are fixed.
 - g. ~~If there are special circumstances under which the average weekly~~ A wage cannot be reasonably and fairly determined by applying subdivisions a through f, an average weekly wage may be computed by dividing the aggregate wages during the twelve months prior to the injury by fifty-two weeks, or the number of weeks actually worked if that number is less than fifty-two approximating the weekly wage lost by the claimant during the period of disability.
- 5. 6. "Average weekly wage in the state" means the determination made of the average weekly wage in the state by job service North Dakota on or before July first of each year, computed to the next highest dollar.
 - 6. 7. "Brother" and "sister" ~~includes~~ include a stepbrother and a stepsister, a half brother and a half sister, and a brother and sister by adoption. The terms do not include a married brother or sister unless he or she actually is dependent.
 - 7. 8. "Bureau" means the North Dakota workers compensation bureau, or the director, or any department heads, assistants, or employees of the bureau designated by the director, to act within the course and scope of their employment in administering the policies, powers, and duties of this title.
 - 8. 9. "Child" means a child under eighteen years of age residing in the employee's household or to whom the employee has a legal obligation of support; or a child eighteen years of age or over and physically or mentally incapable of self-support who is actually dependent upon the employee for support; or any child between eighteen and twenty-two years of age who is enrolled as a full-time student in any accredited educational institution who is actually dependent upon the employee for support. This term includes a legitimate child, a stepchild, adopted child, posthumous child, foster child, and acknowledged illegitimate child, but shall not include a married child unless actually dependent.

9: 10. "Compensable injury" means an injury by accident arising out of and in the course of employment which must be established by medical evidence supported by objective medical findings.

a. The term "~~compensable injury~~", in addition to an injury by accident, includes:

- (1) ~~Any disease that can be fairly traceable to the employment. Ordinary diseases of life to which the general public outside of the employment is exposed are not compensable except where the disease follows as an incident to, and in its inception is~~ Disease caused by a hazard to which an employee is subjected in the course of employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. The disease Disease includes impairment and effects from radiation fairly traceable to the employment. It does not have to be foreseen or expected, but after it is contracted, it must have had its origin in a risk connected with the employment and have flowed from that source as a rational consequence. Preventive treatment for communicable diseases is not compensable under this title.
- (2) An injury to artificial members.
- (3) Injuries due to heart attack or other heart-related disease, stroke, and physical injury ~~precipitated~~ caused by mental stimulus, which must be causally related to but only when caused by the employee's employment, with reasonable medical certainty, and ~~which must have been precipitated by~~ only when it is determined with reasonable medical certainty that unusual stress is at least fifty percent of the cause of the injury or disease as compared with all other contributing causes combined. Unusual stress means stress greater than the highest level of stress normally experienced or anticipated in that position or line of work.
- (4) Injuries arising out of employer-required or supplied travel to and from a remote jobsite or activities performed at the direction or under the control of the employer.
- (5) An injury caused by the willful act of a third person directed against an employee because of the employee's employment.
- (6) A mental or psychological condition caused by a physical injury, but only when the physical injury is determined with reasonable medical certainty to be at least fifty percent of the cause of the condition as compared with all other contributing causes combined, and only when the condition did not preexist the work injury.

b. The term does not include:

- (1) Ordinary diseases of life to which the general public outside of employment is exposed or preventive treatment for communicable diseases.

- (2) A willfully self-inflicted injury, including suicide or attempted suicide, or an injury caused by the employee's willful intention to commit suicide or to injure or kill another; including injury or aggravation of an injury, which results from the employee's suicide or attempted suicide.
- (2) (3) Any injury caused by the use of intoxicants or the illegal use of controlled substances.
- (3) (4) An injury that arises out of an altercation in which the injured employee is the initial physical aggressor. This paragraph does not apply to public safety employees, including law enforcement officers, or private security personnel who are required to engage in altercations as part of their job duties if the altercation arises out of the performance of those job duties.
- (4) (5) An injury that arises out of an illegal act committed by the injured employee.
- (5) (6) An injury that arises out of an employee's voluntary nonpaid participation in any recreational activity, including athletic events, parties, and picnics, even though the employer pays some or all of the cost of the activity.
- (6) (7) Injuries attributable to a preexisting injury, disease, or other condition which clearly manifested itself prior to the compensable injury. This does not prevent compensation where employment substantially aggravates and acts upon an underlying condition, substantially worsening its severity, or where employment substantially accelerates the progression of an underlying condition. It is insufficient, however, to afford compensation under this title solely because, including when the employment acted acts as a trigger to produce symptoms in a latent and underlying the preexisting injury, disease, or other condition if the underlying condition would likely have progressed similarly in the absence of the employment trigger, unless the employment trigger is determined to be a substantial aggravating or accelerating factor. An underlying condition is a preexisting injury, disease, or infirmity substantially accelerates its progression or substantially worsens its severity.
- (7) (8) A nonemployment injury that, although acting upon a prior compensable injury, is established as an independent intervening cause of injury.
- (8) (9) A latent or asymptomatic degenerative condition, caused in substantial part by employment duties, which is triggered or made active by a nonemployment subsequent injury.
- (9) (10) A mental injury arising from mental stimulus or a mental or emotional injury arising principally out of a bona fide personnel action, including a transfer, promotion, demotion, or termination except an action that is the intentional infliction of emotional harm.

- 40: 11. "Date of first disability" and "loss of earnings date" ~~mean~~ means the first ~~full~~ date the employee was unable to work in relation to a compensable injury. These terms ~~do not apply to recurrent disabilities.~~
- 44: 12. "Date of maximum medical improvement" or "date of maximum medical recovery" means the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated based upon reasonable medical probability.
- 42: 13. "Director" means the director of the bureau.
- 43: 14. "Disability" means loss of earnings capacity and may be permanent total, temporary total, or partial.
- a. Permanent total disability is permanent in nature and total in character, and is paid to an employee who is not capable of rehabilitation of earnings capacity, which depend upon the following factors:
- (1) Nature of injury;
 - (2) Degree of physical impairment;
 - (3) Age;
 - (4) Education;
 - (5) ~~Work history; and~~
 - (6) ~~Vocational rehabilitation potential.~~
- b. Temporary total disability is total in character but temporary in nature and is paid to the employee until maximum medical recovery with work release to any occupation for which the employee is reasonably suited by aptitude, education, experience, or training.
- e. Partial disability exists when the following are present and must be paid pursuant to section 65-05-10:
- (1) The employee has a permanent physical inability to perform certain work;
 - (2) The employee is able to do some work subject to the disability;
 - (3) The employee has an actual loss of earning capacity that is causally related to the disability; and
 - (4) The employee has not undergone training under chapter 65-05.1.
- 44: 15. "Doctor" means doctor of medicine, chiropractor, osteopathy, dentist, optometrist, podiatrist, or psychologist acting within the scope of the doctor's license.

45. 16. "Employee" means ~~every~~ a person engaged in a hazardous employment ~~under any appointment, contract of hire, or apprenticeship, express or implied, oral or written, who performs services for another for remuneration unless the person is an independent contractor under the "common law" test, and:~~

a. The term includes:

- (1) All elective and appointed officials of this state and its political subdivisions, including municipal corporations and including the members of the legislative assembly, all elective officials of the several counties of this state, and all elective peace officers of any city.
- (2) Aliens.
- (3) County general assistance workers except those who are engaged in repaying to counties moneys that the counties have been compelled by statute to expend for county general assistance.
- (4) Minors, whether lawfully or unlawfully employed; a minor is deemed sui juris for the purposes of this title, and no other person has any claim for relief or right to claim workers' compensation benefits for any injury to a minor worker, but in the event of the award of a lump sum of ~~compensation benefits~~ to a minor employee, the lump sum may be paid only to the legally appointed guardian of the minor.

b. The term does not include:

- (1) Any person whose employment is both casual and not in the course of the trade, business, profession, or occupation of that person's employer.
- (2) Any person who is engaged in an illegal enterprise or occupation.
- (3) The spouse or child of the employer dwelling in the household of the employer.
- (4) Any real estate broker or real estate salesperson, provided the person meets the following three requirements:
 - (a) The salesperson or broker must be a licensed real estate agent under section 43-23-05.
 - (b) Substantially all of the salesperson's or broker's remuneration for the services performed as a real estate agent must be directly related to sales or other efforts rather than to the number of hours worked.
 - (c) A written agreement must exist between the salesperson or broker and the person or firm for whom the salesperson or broker works, which agreement must provide that the salesperson or broker will not be

treated as an employee but rather as an independent contractor.

- (5) The members of the board of directors of a business corporation who are not employed in any capacity by the corporation other than as members of the board of directors.
- (6) Any individual delivering newspapers or shopping news, if substantially all of the individual's remuneration is directly related to sales or other efforts rather than to the number of hours worked and a written agreement exists between the individual and the publisher of the newspaper or shopping news which states that the individual is an independent contractor.

(7) An employer.

- c. Persons employed by a subcontractor, or by an independent contractor operating under an agreement with the general contractor, for the purpose of this chapter are deemed to be employees of the general contractor who is liable and responsible for the payments of premium for the coverage of these employees until the subcontractor or independent contractor has secured the necessary coverage and paid the premium for the coverage. This subdivision does not impose any liability upon a general contractor other than liability to the bureau for the payment of premiums which are not paid by a subcontractor or independent contractor.

~~46-~~ 17. "Employer" means a person who engages or received the services of another for remuneration unless the person performing the services is an independent contractor under the "common law" test. The term includes:

- a. The state and all political subdivisions thereof.
- b. All public and quasi-public corporations in this state.
- c. Every person, partnership, limited liability company, association, and private corporation, including a public service corporation.
- d. The legal representative of any deceased employer.
- e. The receiver or trustee of any person, partnership, limited liability company, association, or corporation, having one or more employees as herein defined.
- f. The president, vice presidents, secretary, or treasurer of a business corporation, but not members of the board of directors of a business corporation who are not also officers of the corporation.
- g. The managers of a limited liability company.
- h. The president, vice presidents, secretary, treasurer, or board of directors of an association or cooperative organized under chapter 6-06, 10-12, 10-13, 10-15, 36-08, or 49-21.

- i. The clerk, assessor, treasurer, or any member of the board of supervisors of an organized township, if the person is not employed by the township in any other capacity.
17. "Employment" means employment by the state and all political subdivisions thereof, by all public and quasi-public corporations therein, and all private employments.
18. "Fairly traceable to the employment" when used to modify the term "disease" means only a disease that:
 - a. Arises under conditions wherein it is apparent to the rational mind upon consideration of all the circumstances that there is a direct causal connection between the conditions under which the work is performed and the disease;
 - b. Can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;
 - c. Can be fairly traced to the employment; or
 - d. However, any condition or impairment of health of a full-time paid firefighter or law enforcement officer caused by lung or respiratory disease, hypertension, heart disease, or exposure to infectious disease as defined by sections ~~23-07.3-01~~ and ~~23-07.3-02~~, or occupational cancer in a full-time paid firefighter, resulting in total or partial disability or death is presumed to have been suffered in the line of duty. The condition or impairment of health may not be attributed to any disease existing before that total or partial disability or death unless the contrary is shown by competent evidence. As used in this subdivision, an occupational cancer is one which arises out of employment as a full-time paid firefighter and is due to injury due to exposure to smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty as a full-time paid firefighter. A full-time paid firefighter or law enforcement officer is not eligible for the benefit provided under this subdivision unless that full-time paid firefighter or law enforcement officer has completed five years of continuous service and has successfully passed a physical examination which fails to reveal any evidence of such a condition. An employer shall require a physical examination upon employment, and annually thereafter, for any employee subject to this subdivision. Results of the examination must be used in rebuttal to a presumption afforded under this subdivision. For purposes of this subdivision, "law enforcement officer" means a person who is licensed to perform peace officer law enforcement duties under chapter 42-63 and is employed full time by the bureau of criminal investigation, the game and fish department, the state highway patrol, the parole and probation division, the North Dakota state university police department, the North Dakota state college of science police department, the university of North Dakota police department, a county sheriff's department, or a city police department. The presumption does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed for ten years or less, if the condition or impairment is diagnosed more than two years after the employment as a

~~full-time paid firefighter or law enforcement officer ends. The presumption also does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed more than ten years, if the condition or impairment is diagnosed more than five years after the employment as a full-time paid firefighter or law enforcement officer ends.~~

- ~~49.~~ "Fee schedule" means the relative value scale, conversion factors, fee schedules, and medical aid rules adopted by the bureau.
- ~~20.~~ 19. "Fund" means the North Dakota workers' compensation fund.
- ~~24.~~ 20. "Grandchild" and the terms defined in subsections 6 7 and 8 9 include only a person who, at the time of the death of the deceased employee, is under eighteen years of age, or if over that age, is incapable of self-support.
- ~~22.~~ 21. "Hazardous employment" means any employment in which one or more employees are employed regularly in the same business or in or about the establishment except:
- a. Agricultural or domestic service.
 - b. Any employment of a common carrier by railroad.
 - c. Any employment for the transportation of property or persons by nonresidents, where, in such transportation, the highways are not traveled more than seven miles [11.27 kilometers] and return over the same route within the state of North Dakota.
 - d. All members of the clergy and employees of religious organizations engaged in the operation, maintenance, and conduct of the place of worship.
- ~~23.~~ 22. "Health care provider" means a doctor or any recognized practitioner providing skilled services pursuant to the prescription of, or under the supervision or direction of, a doctor.
- ~~24.~~ 23. "Orphan" means a child who has no lawful parent.
- ~~25.~~ 24. "Parent" includes a stepparent and a parent by adoption.
- ~~26.~~ 25. "Permanent impairment" means the loss of or loss of use of a member of the body existing after the date of maximum medical improvement or recovery, and includes disfigurement resulting from an injury if such disfigurement diminishes the ability of the employee to obtain employment. The loss must be determined in accordance with and based upon the most current edition of the American medical association's "Guides to the Evaluation of Permanent Impairment". Any impairment award, not expressly contemplated within the American medical association's "Guides to the Evaluation of Permanent Impairment", must be determined by clear and convincing medical evidence.
26. "Permanent total disability" means an employee is determined incapable of rehabilitation of earnings capacity as determined by the:

- a. Nature of injury.
 - b. Degree of physical impairment.
 - c. Education.
 - d. Work history.
 - e. Vocational rehabilitation potential.
27. "Rehabilitation services" means nonmedical services reasonably necessary to restore a disabled employee to substantial gainful employment as defined by section 65-05.1-01 as near as possible. The term may include vocational evaluation, counseling, education, workplace modification, and vocational retraining including on-the-job training or training for alternative employment with the same employer, and job placement assistance.
28. "Seasonal employment" includes an occupation that has periods of forty-five consecutive days of not receiving wages.
29. "Spouse" includes only the decedent's husband or wife who was living with the decedent or was dependent upon the decedent for support at the time of injury.
30. "Utilization review" means the initial and continuing evaluation of appropriateness in terms of both the level and the quality of health care and health services provided a patient, based on medically accepted standards. The evaluation must be accomplished by means of a system that identifies the utilization of medical services, based on medically accepted standards, and which refers instances of possible inappropriate utilization to the bureau to obtain opinions and recommendations of expert medical consultants to review individual cases for which administrative action may be deemed necessary.
31. "Wages" means an employee's remuneration from all employment reportable ~~by employers~~ to the internal revenue service as earned income for federal income tax purposes ~~and lost as the result of a compensable work injury~~. For purposes of chapter 65-04, "wages" may not include dismissal or severance pay.

SECTION 2. AMENDMENT. Section 65-01-03 of the North Dakota Century Code is amended and reenacted as follows:

65-01-03. Person performing service for remuneration presumed an employee.

Each person who performs services for another for a remuneration; ~~whether the same is paid as a salary, commission, or other considerations in lieu thereof, under any agreement or contract of hire, express or implied,~~ is presumed to be an employee of the person for whom the services are performed, unless it is proven that the person maintains a separate business establishment or holds that person out to render or renders services to the general public. ~~In determining whether a person is an independent contractor or an employee, the test to be employed is under the "common law" test. The person who asserts that a person is an independent contractor under the "common law" test, rather than an employee, has the burden of proving that fact.~~

SECTION 3. AMENDMENT. Section 65-01-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-01-11. Burden of proof in compensation matters - Death certificate. If the bureau or an employer claims that an employee is not entitled to the benefits of the North Dakota Workers' Compensation Law ~~by reason of the fact that~~ because the employee's injury was caused by the employee's willful intention to injure himself, or to injure another, or by reason of the voluntary impairment caused by use of alcohol or illegal use of a controlled substance by the employee, the burden of proving ~~such~~ the exemption or forfeiture is upon the bureau or upon the person alleging the same; however, an alcohol concentration level at or above the limit set by the United States secretary of transportation in 49 CFR 383.51 or a level of an illegally used controlled substance sufficient to cause impairment found by a test required by a physician, qualified technician, chemist, or registered nurse and performed as required by the United States secretary of transportation under 49 CFR part 40, at or above the cutoff level in part 40, creates a rebuttable presumption that the injury was due to impairment caused by the use of alcohol or the illegal use of a controlled substance. An employer who has a mandatory drug alcohol testing policy for work accidents, or an employer or a doctor who has reasonable grounds to suspect an employee's alleged work injury was caused by the employee's voluntary impairment caused by use of alcohol or illegal use of a controlled substance may request that the employee undergo testing to determine if the employee had alcohol or the controlled substance in the employee's system at levels greater than the limit set by the United States department of transportation at the time of the injury. If an employee refuses to submit to a reasonable request to undergo a test to determine if the employee was impaired, or if an employee refuses to submit to a test for drugs or alcohol after a work accident as mandated by company policy, the employee forfeits all entitlement to workers' compensation benefits arising out of that injury. Any claimant against the fund, however, has the burden of proving by a preponderance of the evidence that the claimant is entitled to ~~participate in the same benefits. In the event of~~ If a claim for death benefits is filed, the official death certificate must be considered as evidence of death and may not be used to establish the cause of death.

² **SECTION 4.** A new section to chapter 65-01 of the North Dakota Century Code is created and enacted as follows:

Presumption of compensability for certain conditions of full-time paid firefighters and law enforcement officers. Any condition or impairment of health of a full-time paid firefighter or law enforcement officer caused by lung or respiratory disease, hypertension, heart disease, or exposure to infectious disease as defined by sections 23-07.3-01 and 23-07.3-02, or occupational cancer in a full-time paid firefighter, resulting in total or partial disability or death, is presumed to have been suffered in the line of duty. The condition or impairment of health may not be attributed to any disease existing before that total or partial disability or death unless the contrary is shown by competent evidence. As used in this section, an occupational cancer is one which arises out of employment as a full-time paid firefighter and is due to injury due to exposure to smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty as a full-time paid firefighter. A full-time paid firefighter or law enforcement officer is not eligible for the benefit provided under this section unless that full-time paid firefighter

² Section 65-01-15.1 was also amended by section 2 of Senate Bill No. 2343, chapter 529.

or law enforcement officer has completed five years of continuous service and has successfully passed a physical examination which fails to reveal any evidence of such a condition. An employer shall require a physical examination upon employment, and annually thereafter, for any employee subject to this section. Results of the examination must be used in rebuttal to a presumption afforded under this section. For purposes of this section, "law enforcement officer" means a person who is licensed to perform peace officer law enforcement duties under chapter 12-63 and is employed full time by the bureau of criminal investigation, the game and fish department, the state highway patrol, the parole and probation division, the North Dakota state university police department, the North Dakota state college of science police department, the university of North Dakota police department, a county sheriff's department, or a city police department. The presumption does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed for ten years or less, if the condition or impairment is diagnosed more than two years after the employment as a full-time paid firefighter or law enforcement officer ends. The presumption also does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed more than ten years, if the condition or impairment is diagnosed more than five years after the employment as a full-time paid firefighter or law enforcement officer ends.

SECTION 5. AMENDMENT. Section 65-01-15 of the North Dakota Century Code is amended and reenacted as follows:

65-01-15. Yearly documentation required for firefighter and law enforcement officer. Except for benefits for exposure to infectious disease as defined by sections 23-07.3-01 and 23-07.3-02, a full-time paid firefighter or law enforcement officer who uses tobacco is not eligible for the benefits provided under ~~subdivision e of subsection 18 of section 65-01-02~~ 4 of this Act, unless the full-time paid firefighter or law enforcement officer provides yearly documentation from a physician which indicates that the full-time paid firefighter or law enforcement officer has not used tobacco for the preceding two years. Any full-time paid firefighter or law enforcement officer employed on June 30, 1995, is not subject to this section until July 1, 1997.

³ **SECTION 6. AMENDMENT.** Section 65-07-03 of the North Dakota Century Code is amended and reenacted as follows:

65-07-03. Determination of weekly wage for premium purposes. If the bureau enters into a contract for insurance under this chapter, the premium for such protection shall be based on:

1. The amount of money derived on an annual basis from the business of an employer or self-employed person as outlined in subdivision a b of subsection ~~4~~ 5 of section 65-01-02. This amount may not be less than the limited payroll required to be reported for an employee in subsection 1 of section 65-04-04.2.
2. A reasonable wage as determined by the bureau for said employees in the same class of industry that the volunteer organization is engaged.

³ Section 65-07-03 was also amended by section 1 of Senate Bill No. 2383, chapter 547.

SECTION 7. BUREAU TO STUDY WAGE-LOSS BENEFITS STRUCTURE. During the 1997-1998 interim, the bureau shall conduct a study of its wage-loss benefits structure to determine if the current structure provides for equitable compensation for wage-loss resulting from a work-related injury. The results of the study must identify the advantages and disadvantages of the current system and of any proposed system. The results must include recommendations on how the bureau's benefits structure could be refined to provide an appropriate balance between adequate benefits and return-to-work incentives. The bureau shall report on the progress of the study to an interim committee designated by the legislative council to receive the report. If any legislation is expected to be proposed as a result of the study, the interim committee designated by the legislative council may review the proposed legislation before it is introduced.

Approved April 2, 1997

Filed April 3, 1997

CHAPTER 528

HOUSE BILL NO. 1440

(Representatives Skarphol, Boucher, Dalrymple)
(Senators Grindberg, Lips, Robinson)

WORKERS COMPENSATION BOARD OF DIRECTORS

AN ACT to create and enact a new subsection to section 65-01-02 and four new sections to chapter 65-02 of the North Dakota Century Code, relating to a workers compensation board of directors; to amend and reenact section 65-02-01 of the North Dakota Century Code, relating to the director and division directors of the workers compensation bureau; to repeal section 65-02-08.1 of the North Dakota Century Code, relating to the workers compensation state advisory council; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁴ **SECTION 1.** A new subsection to section 65-01-02 of the North Dakota Century Code is created and enacted as follows:

"Board" means the North Dakota workers compensation board of directors.

⁵ **SECTION 2. AMENDMENT.** Section 65-02-01 of the North Dakota Century Code is amended and reenacted as follows:

65-02-01. Workers compensation bureau - ~~Executive director~~ Director - Division directors. The bureau must be maintained for the administration of this title. The ~~governor board~~ shall appoint the director of the bureau ~~who.~~ The director is subject to the supervision and direction of the ~~governor board~~ and ~~who shall serve~~ serves at the pleasure of the ~~governor board~~. ~~The appointment must be on a nonpartisan, merit basis, in accordance with chapter 54-42. The governor shall set the compensation and prescribe the duties of the director.~~ The director may appoint the director of any division ~~of the bureau which~~ is established by the director. The appointment of a division director must be on a nonpartisan, merit basis.

SECTION 3. A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

Workers compensation board of directors - Appointment.

1. Beginning September 1, 1997, the initial board of directors shall consist of the members on the state advisory council on December 15, 1996. The initial board shall submit to the governor a list of three names of

⁴ Section 65-01-02 was also amended by section 1 of House Bill No. 1260, chapter 530, and section 1 of House Bill No. 1269, chapter 527.

⁵ Section 65-02-01 was also amended by section 11 of Senate Bill No. 2114, chapter 461.

potential candidates for each of the employer member positions and the medical association position. From each list the governor shall select an individual to fill the member position of the subsequent board. An organization that is statewide in scope and which through its affiliates embraces a cross section and a majority of organized labor in this state shall submit to the governor a list of three names of potential candidates for one of the three employee positions. The governor shall select an individual to fill this organized labor employee member position, and the governor shall appoint two individuals to fill the remaining two employee positions. The subsequent board is effective January 1, 1998.

2. After December 31, 1997, the board consists of ten members. The appointment and replacement of the members must ensure that:
 - a. Six board members represent employers in this state that maintain active accounts with the bureau, at least one of which must be a participant in the risk management program, at least two of which must be employers with annual premiums greater than twenty-five thousand dollars, at least one of which must be an employer with an annual premium of ten thousand dollars but less than twenty-five thousand dollars, and at least one of which must be an employer with an annual premium of less than ten thousand dollars.
 - b. Three members represent employees; at least one member must have received workers' compensation benefits; and at least one member must represent organized labor.
 - c. One nonvoting member is a member of the North Dakota medical association.
3. Board members shall serve six-year terms, except of the initial board members, an employee representative and two employer representatives shall serve only through December 31, 1998; an employee representative and two employer representatives shall serve only through December 31, 2000; and an employee representative, two employer representatives, and the medical association representative shall serve only through December 31, 2002, as determined by lot to initiate a cycle that results in three members' terms expiring on December thirty-first of each even-numbered year, and beginning January first of each odd-numbered year. Board members may not serve more than two consecutive terms. A departing member representing an employer must be replaced by a member representing an employer, most of whose employees are in a different rate classification than those of the employer represented by the departing member. The governor shall appoint the replacement member for a departing employer representative or medical association representative from a list of three candidates submitted by the board. The governor shall select the replacement member for the departing organized labor employee representative from a list of three names of potential candidates submitted by an organization that is statewide in scope and which through its affiliates embraces a cross section and a majority of organized labor in this state, and the governor shall select the replacement member for a departing nonorganized labor employee representative.

⁶ **SECTION 4.** A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

Compensation of board members. A board member is entitled to receive compensation in the amount of sixty-two dollars and fifty cents per day for days spent in attendance at board meetings or other business as approved by the board. A board member is entitled to reimbursement for mileage and expenses as provided for state officers.

SECTION 5. A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

Board - Powers and duties. The board may authorize the bureau to transfer moneys between line items within the bureau's budget. The board shall:

1. Appoint a director on a nonpartisan, merit basis.
2. Set the compensation of the director.
3. Ensure a proper response to any audit recommendations.
4. Present an annual report to the legislative audit and fiscal review committee. The report must be presented by the chairman of the board and the director.
5. Prepare, with the assistance of the bureau, a bureau budget, beginning with the July 1, 1999, through June 30, 2001, biennium. The bureau shall present the budget to the governor for inclusion in the governor's budget. If the governor makes adjustments to the budget, the board may concur in the adjustments or may present testimony to the appropriations committees of the legislative assembly, requesting amendments to the budget to remove adjustments made by the governor. The deadline for submission of the budget is the same as the deadline for all executive agencies.
6. Assist the bureau in formulating policies and discussing problems related to the administration of the bureau, while ensuring impartiality and freedom from political influence.
7. Incorporate principles of continuous improvement goalsetting, a procedure for implementing a team-oriented continuous improvement program throughout all operations of the bureau. The program must include a number of challenging, measurable goals to ensure the bureau maintains focus on improving those areas most important to its primary mission.
8. Adopt internal management rules creating bylaws for the board and relating to the election of a board chairman, formation of committees, replacement of departing members, voting procedures, and other procedural matters.

⁶ Section 65-02-03.2 was also amended by section 37 of Senate Bill No. 2052, chapter 432.

SECTION 6. A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

Independent audit - Bureau development of performance measurements.

Biennially, the director shall request the state auditor to select an audit firm with extensive expertise in workers' compensation practices and standards to complete a performance audit of the functions and operations of the bureau during that biennium. The audit must evaluate the departments of the bureau to determine whether the bureau is providing quality service in an efficient and cost-effective manner. The firm also shall conduct a performance audit of the board to determine whether the board is operating within section 5 of this Act and within the board's bylaws. The audit report must contain recommendations for departmental improvement or an explanation of why no recommendations are being made. The director, the chairman of the board, and the auditor shall present the audit report and any action taken to the legislative council's legislative audit and fiscal review committee and to the house and senate industry, business and labor standing committees during the next regular session of the legislative session following the audit. The director shall provide a copy of the audit report to the state auditor. The bureau shall develop and maintain comprehensive, objective performance measurements. These measurements must be evaluated as part of the independent audit performed under this section.

SECTION 7. REPEAL. Section 65-02-08.1 of the North Dakota Century Code is repealed.

SECTION 8. EFFECTIVE DATE. Section 7 of this Act becomes effective September 1, 1997.

Filed April 7, 1997

NOTE: The Governor's veto of House Bill No. 1440 was not sustained. For the text of the Governor's veto message see chapter 558.

CHAPTER 529

SENATE BILL NO. 2343

(Senators Sand, Thompson)
(Representatives Carlson, Jacobs)

WORKERS' COMPENSATION COVERAGE PRESUMPTIONS

AN ACT to create and enact a new section to chapter 65-01 of the North Dakota Century Code, relating to the presumption that certain conditions are related to a firefighter's or a law enforcement officer's work for purposes of workers' compensation coverage; to amend and reenact subsection 18 of section 65-01-02 of the North Dakota Century Code, relating to the presumption that certain conditions are related to a firefighter's or a law enforcement officer's work for purposes of workers' compensation coverage; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 18 of section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

18. "Fairly traceable to the employment" when used to modify the term "disease" means only a disease that:
 - a. Arises under conditions wherein it is apparent to the rational mind upon consideration of all the circumstances that there is a direct causal connection between the conditions under which the work is performed and the disease;
 - b. Can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;
 - c. Can be fairly traced to the employment; or
 - d. However, any condition or impairment of health of a full-time paid firefighter or law enforcement officer caused by lung or respiratory disease, hypertension, heart disease, or exposure to infectious disease as defined by sections 23-07.3-01 and 23-07.3-02, or occupational cancer in a full-time paid firefighter, resulting in total or partial disability or death is presumed to have been suffered in the line of duty. The condition or impairment of health may not be attributed to any disease existing before that total or partial disability or death unless the contrary is shown by competent evidence. As used in this subdivision, an occupational cancer is one which arises out of employment as a full-time paid firefighter and is due to injury due to exposure to smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty as a full-time paid firefighter. A full-time paid firefighter or law enforcement officer is not eligible for the benefit provided under this subdivision unless that full-time paid firefighter or law enforcement officer has completed five years of continuous

service and has successfully passed a ~~physical~~ medical examination which fails to reveal any evidence of such a condition. An employer shall require a ~~physical~~ medical examination upon employment, ~~and annually thereafter~~, for any employee subject to this subdivision. After the initial medical examination, an employer shall require at least a periodic medical examination as follows: for one to ten years of service, every five years; for eleven to twenty years of service, every three years; and for twenty-one or more years of service, every year. The periodic medical examination, at a minimum, must consist of a general medical history of the individual and the individual's family; an occupational history including contact and an exposure to hazardous materials, toxic products, contagious and infectious diseases, and to physical hazards; a physical exam including measurement of height, weight, and blood pressure; and laboratory and diagnostic procedures including a nonfasting total blood cholesterol test and papanicolaou smear for women. If the medical examination reveals that an employee falls into a recognized risk group, the employee must be referred to a qualified health professional for future medical examination. This subdivision does not affect an employee's responsibility to document that the employee has not used tobacco as required under section 65-01-15. Results of the examination must be used in rebuttal to a presumption afforded under this subdivision. For purposes of this subdivision, "law enforcement officer" means a person who is licensed to perform peace officer law enforcement duties under chapter 12-63 and is employed full time by the bureau of criminal investigation, the game and fish department, the state highway patrol, the parole and probation division, the North Dakota state university police department, the North Dakota state college of science police department, the university of North Dakota police department, a county sheriff's department, or a city police department. The presumption does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed for ten years or less, if the condition or impairment is diagnosed more than two years after the employment as a full-time paid firefighter or law enforcement officer ends. The presumption also does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed more than ten years, if the condition or impairment is diagnosed more than five years after the employment as a full-time paid firefighter or law enforcement officer ends.

⁷ **SECTION 2.** A new section to chapter 65-01 of the North Dakota Century Code is created and enacted as follows:

Presumption of compensability for certain conditions of full-time paid firefighters and law enforcement officers. Any condition or impairment of health of a full-time paid firefighter or law enforcement officer caused by lung or respiratory disease as defined by sections 23-07.3-01 and 23-07.3-02, or occupational cancer in a

⁷ Section 65-01-15.1 was also amended by section 4 of House Bill No. 1269, chapter 527.

full-time paid firefighter, resulting in total or partial disability or death is presumed to have been suffered in the line of duty. The condition or impairment of health may not be attributed to any disease existing before that total or partial disability or death unless the contrary is shown by competent evidence. As used in this section, an occupational cancer is one which arises out of employment as a full-time paid firefighter and is due to injury due to exposure to smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty as a full-time paid firefighter. A full-time paid firefighter or law enforcement officer is not eligible for the benefit provided under this section unless that full-time paid firefighter or law enforcement officer has completed five years of continuous service and has successfully passed a medical examination which fails to reveal any evidence of such a condition. An employer shall require a medical examination upon employment, for any employee subject to this section. After the initial medical examination, an employer shall require at least a periodic medical examination as follows: for one to ten years of service, every five years; for eleven to twenty years of service, every three years; and for twenty-one or more years of service, every year. The periodic medical examination, at a minimum, must consist of a general medical history of the individual and the individual's family; an occupational history including contact with and an exposure to hazardous materials, toxic products, contagious and infectious diseases, and to physical hazards; a physical examination including measurement of height, weight, and blood pressure; and laboratory and diagnostic procedures including a nonfasting total blood cholesterol test and papanicolaou smear for women. If the medical examination reveals that an employee falls into a recognized risk group, the employee must be referred to a qualified health professional for future medical examination. This section does not affect an employee's responsibility to document that the employee has not used tobacco as required under section 65-01-15. Results of the examination must be used in rebuttal to a presumption afforded under this section. For purposes of this section, "law enforcement officer" means a person who is licensed to perform peace officer law enforcement duties under chapter 12-63 and is employed full time by the bureau of criminal investigation, the game and fish department, the state highway patrol, the parole and probation division, the North Dakota state university police department, the North Dakota state college of science police department, the university of North Dakota police department, a county sheriff's department, or a city police department. The presumption does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed for ten years or less, if the condition or impairment is diagnosed more than two years after the employment as a full-time paid firefighter or law enforcement officer ends. The presumption also does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed more than ten years, if the condition or impairment is diagnosed more than five years after the employment as a full-time paid firefighter or law enforcement officer ends.

SECTION 3. EFFECTIVE DATE. Section 1 of this Act becomes effective if House Bill No. 1269 is not approved by the fifty-fifth legislative assembly. Section 2 of this Act becomes effective if House Bill No. 1269 is approved by the fifty-fifth legislative assembly.

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 530**HOUSE BILL NO. 1260**

(Representative Berg)

(Senator Mutch)

**PERMANENT IMPAIRMENT UNDER WORKERS'
COMPENSATION**

AN ACT to amend and reenact subsection 26 of section 65-01-02 of the North Dakota Century Code, relating to the definition of permanent impairment for workers' compensation purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁸ **SECTION 1. AMENDMENT.** Subsection 26 of section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

26. "Permanent impairment" means the loss of or loss of use of a member of the body existing after the date of maximum medical improvement or recovery, and includes disfigurement resulting from an injury ~~if such disfigurement diminishes the ability of the employee to obtain employment.~~ The loss must be determined in accordance with and based upon the most current edition of the American medical association's "Guides to the Evaluation of Permanent Impairment". Any impairment award, not expressly contemplated within the American medical association's "Guides to the Evaluation of Permanent Impairment", must be determined by clear and convincing medical evidence.

Approved March 23, 1997

Filed March 24, 1997

⁸ Section 65-01-02 was also amended by section 1 of House Bill No. 1269, chapter 527, and section 1 of House Bill No. 1440, chapter 528.

CHAPTER 531

HOUSE BILL NO. 1227

(Representative Kilzer)

WORKERS COMPENSATION BUREAU SUBROGATION INTEREST

AN ACT to amend and reenact section 65-01-09 of the North Dakota Century Code, relating to subrogation interests of the workers compensation bureau.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-01-09 of the North Dakota Century Code is amended and reenacted as follows:

65-01-09. Injury through negligence of third person - Option of employee - Fund subrogated when claim filed. When an injury or death for which compensation is payable under provisions of this title shall have been sustained under circumstances creating in some person other than the fund a legal liability to pay damages in respect thereto, the injured employee, or the employee's dependents may claim compensation under this title and proceed at law to recover damages against such other person. The fund is subrogated to the rights of the injured employee or the employee's dependents to the extent of fifty percent of the damages recovered up to a maximum of the total amount it has paid or would otherwise pay in the future in compensation and benefits for the injured employee. The bureau's subrogation interest may not be reduced by settlement, compromise, or judgment. The action against such other person may be brought by the injured employee, or the employee's dependents in the event of the employee's death. Such action shall be brought in the injured employee's or in the employee's dependents' own right and name and as trustee for the bureau for the subrogation interest of the bureau. However, if the director chooses not to participate in a health care malpractice action, the fund has no subrogation interest and no obligation to pay fees or costs under this section. If the injured employee or the employee's dependents do not institute suit within sixty days after date of injury, the bureau may bring the action in its own name and as trustee for the injured employee or the employee's dependents and retain as its subrogation interest the full amount it has paid or would otherwise pay in the future in compensation and benefits to the injured employee or the employee's dependents. Within sixty days after both the injured employee and the bureau have declined to commence an action against a third person as provided above, the employer may bring the action in the employer's own name or in the name of the employee, or both, and in trust for the bureau and for the employee. The party bringing the action may determine if the trial jury should be informed of the trust relationship. If the action is brought by the injured employee or the employee's dependents, or the employer as provided above, the bureau shall pay fifty percent of the costs of the action, exclusive of attorney fee, when such costs are incurred. If there is no recovery of damages in the action, this shall be a cost of the bureau to be paid from the bureau general fund. When there is recovery of damages in the action, the costs of the action, exclusive of attorneys fees, must be prorated and adjusted on the percentage of the total subrogation interest of the bureau recovered to the total recovery in the action. The bureau shall pay attorney fees to the injured employee's attorney from the bureau general fund as follows:

1. Twenty percent of the subrogation interest recovered for the bureau when legal action is not commenced.
2. Twenty-five percent of the subrogation interest recovered for the bureau when action is commenced and settled before judgment.
3. Thirty-three and one-third percent of the subrogation interest recovered for the bureau when recovered through judgment.

The above provisions as to costs of the action and attorney fees is effective only when the injured employee advises the bureau in writing the name and address of the employee's attorney, and that the employee has employed such attorney for the purpose of collecting damages or of bringing legal action for recovery of damages. If a claimant fails to pay the bureau's subrogation interest within thirty days of receipt of a recovery in a third party action, the bureau's subrogation interest is the full amount of the damages recovered, up to a maximum of the total amount it has paid or would otherwise pay in the future in compensation and benefits to the injured employee or the employee's dependents, and no costs or attorney fees will be paid from the bureau's subrogation interest.

Approved April 1, 1997

Filed April 2, 1997

CHAPTER 532

HOUSE BILL NO. 1270

(Representative Berg)

(Senator Mutch)

WORKERS' COMPENSATION DECISIONS AND DISPUTES

AN ACT to create and enact a new section to chapter 65-01 of the North Dakota Century Code, relating to decisions made by the workers compensation bureau; to amend and reenact sections 65-02-11, 65-02-20, 65-02-27, and subsection 4 of section 65-08-01 of the North Dakota Century Code, relating to process and procedure used by the bureau, dispute resolution under the bureau's managed care program, the workers' adviser program, and procedures for filing a claim under an extraterritorial coverage agreement; and to repeal section 65-01-14 of the North Dakota Century Code, relating to initial decisions made by the workers compensation bureau; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 65-01 of the North Dakota Century Code is created and enacted as follows:

Decisions by bureau - Disputed decisions. The following procedures must be followed in claims for benefits, notwithstanding any provisions to the contrary in chapter 28-32:

1. The bureau shall send a copy of each initial claim form filed with the bureau to the claimant's employer, by regular mail, along with a form for the employer's response, if the employer's response has not been filed at the time the claim is filed. Failure of the employer to file a response within fourteen days from the day the response form was mailed to the employer constitutes the employer's admission that the information in the claim form is correct.
2. The bureau may conduct a hearing on any matter within its jurisdiction by informal internal review of the information of record.
3. The bureau may issue a notice of decision for any decision made by informal internal review and shall serve the notice of decision on the parties by regular mail. A notice of decision must include a statement of the decision, a short summary of the reason for the decision, and notice of the right to reconsideration.
4. A party has thirty days from the day the notice of decision was mailed by the bureau in which to file a written request for reconsideration. The request must state the alleged errors in the decision and the relief sought. The request may be accompanied by additional evidence not previously submitted to the bureau. The bureau shall reconsider the matter by informal internal review of the information of record. Absent a timely

and sufficient request for reconsideration, the notice of decision is final and may not be reheard or appealed.

5. Within sixty days after receiving a request for reconsideration, the bureau shall serve on the parties by regular mail a notice of decision reversing the previous decision or, in accordance with the North Dakota Rules of Civil Procedure, an administrative order that includes its findings, conclusions, and order. The bureau may serve an administrative order on any decision made by informal internal review without first issuing a notice of decision and receiving a request for reconsideration.
6. A party has thirty days from the date of service of an administrative order in which to file a request for assistance from the workers' adviser program under section 65-02-27.
7. A party has thirty days, from the date of service of an administrative order or from the day the workers' adviser program mails its notice that the program's assistance is complete, in which to file a written request for rehearing. The request must specifically state each alleged error of fact and law to be reheard and the relief sought. Absent a timely and sufficient request for rehearing, the administrative order is final and may not be reheard or appealed.
8. Rehearings must be conducted as hearings under chapter 28-32 to the extent the provisions of that chapter do not conflict with this section. The bureau may arrange for the designation of hearing officers to conduct rehearings and issue recommended findings, conclusions, and orders. In reviewing recommended findings, conclusions, and orders, the bureau may consult with its legal counsel representing it in the proceeding.
9. Within sixty days after receiving the recommended findings, conclusions, and order, the bureau shall serve on the parties, in accordance with the North Dakota Rules of Civil Procedure, its findings, conclusions, and posthearing administrative order.
10. A party may appeal a posthearing administrative order to district court in accordance with chapter 65-10.
11. Any notice of decision, administrative order, or posthearing administrative order is subject to review and reopening under section 65-05-04.

SECTION 2. AMENDMENT. Section 65-02-11 of the North Dakota Century Code is amended and reenacted as follows:

65-02-11. Process and procedure - Investigations - Examination of witnesses - Costs. ~~Process~~ Except as otherwise provided by this title, process and procedure under this title ~~shall be~~ is governed by the provisions of chapter 28-32. The bureau may make investigation ~~in such manner and at such places~~ as in its judgment ~~shall be~~ is best calculated to ascertain the substantial rights of all the parties. Any member of the bureau, and any person specifically designated by the bureau ~~shall have the power to~~ may examine witnesses and records, with or without subpoena, ~~to~~ examine, investigate, copy, photograph, and take samples at any pertinent location or facility, ~~to~~ administer oaths to witnesses, ~~to~~ require the attendance of witnesses

without fee whenever the testimony is taken at the home, office, or place of work of ~~such those~~ witnesses, and generally to do anything ~~requisite or~~ necessary to facilitate or promote the efficient administration of this title. The bureau shall pay the costs of any medical examination, scientific investigation, medical or expert witness appearance or report, requested or approved by the bureau, relating to a claim for benefits, ~~shall be paid~~ from the bureau general fund.

SECTION 3. AMENDMENT. Section 65-02-20 of the North Dakota Century Code is amended and reenacted as follows:

65-02-20. Bureau to establish managed care program. The bureau shall establish a managed care program with a third-party administrator to effect the best medical solution for an injured employee. The managed care system must allow for a third-party administrator to direct the program for medical care of the injured employee upon a finding by the bureau that the employee suffered a compensable injury. The managed care administrator shall operate according to guidelines adopted by the bureau to ensure that an injured employee receives appropriate medical treatment in a cost-effective manner. The managed care administrator shall assist the bureau in the medical management of claims within the bounds of workers' compensation law. If an employee, employer, or medical provider disputes the recommendation of the managed care administrator, the employee, employer, or medical provider may request binding dispute resolution on the recommendation. The bureau shall make rules providing for the procedures for dispute resolution. Dispute resolution under this section is not subject to chapter 28-32 or section ~~65-01-14~~ 1 of this Act or section 65-02-15. A dispute resolution decision under this section requested by a medical provider concerning payment for medical treatment already provided or a request for diagnostic tests or treatment is not reviewable by any court. A dispute resolution decision under this section requested by an employee is reviewable by a court only if medical treatment has been denied to the employee. A dispute resolution decision under this section requested by an employer is reviewable by a court only if medical treatment is awarded to the employee. The dispute resolution decision may be reversed only if the court finds that there has been an abuse of discretion by the dispute resolution panel. Any person providing binding dispute resolution services under this section is exempt from civil liability relating to the binding dispute resolution process and decision.

SECTION 4. AMENDMENT. Section 65-02-27 of the North Dakota Century Code is amended and reenacted as follows:

65-02-27. (Effective until July 31, 1999) Workers' adviser program. A workers' adviser program is established. The program is independent of the claims department of the workers compensation bureau and activities administered through the program must be administered in accordance with this title. The program must provide assistance to an injured employee, including acting on behalf of an injured employee who is aggrieved by a decision of the bureau, communicating with bureau staff regarding claim dispute resolution, and advising an injured employee of the effect of decisions made by the bureau, the employee, or an employer under this title. The bureau shall employ a director of the program, support staff for the program, and other personnel determined to be necessary for the administration of the program. Personnel employed to administer the program may not act as an attorney for an injured employee. The bureau may not pay attorney fees to an attorney who represents an injured employee in a disputed claim before the bureau unless the injured employee has first attempted to resolve the dispute through the workers' adviser program. ~~An~~ A request for assistance by an injured employee who contacts the program for assistance within the appeal period after for requesting a hearing on an administrative order ~~has been issued is deemed to have satisfied the~~

~~requirement of tolls the time period for requesting an administrative a hearing or an arbitration hearing on that order. The period begins upon notice to the employee, sent by regular mail, that the program's assistance to the employee is completed.~~ The information contained in a file established by the workers' adviser program on an injured employee's disputed claim is not subject to discovery and may not be used as evidence in subsequent proceedings relative to that dispute.

SECTION 5. AMENDMENT. Subsection 4 of section 65-08-01 of the North Dakota Century Code is amended and reenacted as follows:

4. An employer whose employment results in significant contacts with this state shall acquire workers' compensation coverage in this state unless a reciprocal agreement between the states is entered which provides that the other state will likewise recognize that an employment relationship entered into in this state is exempted from the application of the workers' compensation law of the other state. An employment has significant contacts with this state when (a) the employee earns or would have been expected to earn twenty-five percent or more of the employee's gross annual wage or income from that employer from services rendered in this state; or (b) if no employee earns twenty-five percent of the employee's gross annual income from that employment within this state, the employer's gross annual payroll in a calendar year in this state is at least one hundred thousand dollars. Under this subsection, an employee injured in this state may elect to file a claim in this state notwithstanding that the employee had another remedy in the state in which the employment was principally localized. A claim filed under this subsection is subject to section 65-05-05. The time limits within which the bureau shall issue a decision on a claim, as specified in ~~sections 65-01-14~~ section 1 of this Act and section 65-02-08, do not begin to run for claims filed under this section until the first date the bureau may begin to process the claim as set forth in section 65-05-05.

SECTION 6. REPEAL. Section 65-01-14 of the North Dakota Century Code is repealed.

SECTION 7. EFFECTIVE DATE. These sections apply to all claims for benefits filed after July 31, 1997, regardless of the date of injury.

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 533

HOUSE BILL NO. 1268

(Representative Berg)
(Senator Mutch)

WORKERS' COMPENSATION ATTORNEY'S FEES

AN ACT to amend and reenact sections 54-12-08, 65-02-08, and 65-10-03 of the North Dakota Century Code, relating to revocation of an appointment of a special assistant attorney general and to payment of attorney's fees paid for representing workers' compensation claimants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-12-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-12-08. Assistant and special assistant attorneys general - Appointment - Revocation - Compensation. After consultation with the head of the state department or institution or with the state board, commission, committee, or agency affected, the attorney general may appoint assistant or special assistant attorneys general to represent the state board, commission, committee, or agency. A state officer, head of any state department, whether elected or appointed, or state department, board, commission, committee, or agency may not employ legal counsel, and no person may act as legal counsel in any matter, action, or proceeding in which the state or any state department, board, commission, committee, or agency is interested or is a party, except upon written appointment by the attorney general. The workers compensation bureau, the department of transportation, the state tax commissioner, the public service commission, the commissioner of insurance, the board of higher education, and the securities commissioner may employ attorneys to represent them. These entities shall pay the salaries and expenses of the attorneys they employ within the limits of legislative appropriations. The attorneys that represent these entities must be special assistant attorneys general appointed by the attorney general pursuant to this section. Absent good cause, the attorney general shall appoint as special assistant attorneys general licensed attorneys selected by these entities. The attorney general may revoke the appointment only for good cause or upon the request of the entity. Good cause ~~includes~~ means an inadequate level of experience, competence, or ethical standards. The powers conferred upon special assistant attorneys general are the same as are exercised by the regular assistant attorneys general, unless the powers are limited specifically by the terms of ~~such~~ the appointment. ~~An~~ Except as otherwise provided by this section, an appointment is revocable at the pleasure of the attorney general. The appointment may be made with or without compensation, and when compensation is allowed by the attorney general for services performed, the compensation must be paid out of the funds appropriated therefor. The attorney general may require payment for legal services rendered by any assistant or special assistant attorney general to any state official, board, department, agency, or commission and those entities shall make the required payment to the attorney general. Moneys received by the attorney general in payment for legal services rendered must be deposited into the attorney general's operating fund. General fund moneys may not be utilized for the payment of legal services provided by the attorneys employed by the attorney general, except for those payments required of the department of human services, state department of health, and the state hospital.

SECTION 2. AMENDMENT. Section 65-02-08 of the North Dakota Century Code is amended and reenacted as follows:

65-02-08. Rulemaking power of the bureau - Fees prescribed by bureau. The bureau shall adopt rules necessary to carry out this title. All fees on claims for legal, medical, and hospital services rendered under this title to an injured employee must be in accordance with schedules of fees adopted by the bureau. Fee schedules for medical and hospital services must incorporate cost-saving measures and must be submitted to and approved by the committee on administrative rules before submission to the legislative council for publication. The bureau shall establish, by administrative rule, costs payable, maximum costs, a reasonable maximum hourly rate, and a maximum fee to compensate an injured employee's attorney for legal services following issuance of an administrative order ~~under chapter 28-32~~ reducing or denying benefits. The bureau shall issue ~~an administrative order~~ a decision within sixty days of the date when all elements of initial filing or notice of reapplication of claim have been satisfied or a claim for additional benefits over and above benefits previously awarded has been made. Satisfaction of elements of filing must be defined by administrative rule. The bureau shall pay an injured employee's attorney's fees and costs from the bureau general fund. Except for an initial determination of compensability, an attorney's fee may not exceed twenty percent of the amount awarded, subject to a maximum fee set by administrative rule. The bureau shall pay an attorney's fees and costs when:

1. The employee has prevailed in binding dispute resolution under section 65-02-20; ~~or~~,
2. The employee has prevailed after an administrative hearing under chapter 28-32.

An injured employee has prevailed only when an additional benefit, previously denied, is paid. An injured employee does not prevail on a remand for further action or proceedings unless that employee ultimately receives an additional benefit as a result of the remand. This section does not prevent an injured employee or an employer from hiring or paying an attorney; however, the employee's attorney may not seek or obtain costs or attorney's fees from both the bureau and the employee relative to the same ~~services claim~~. All disputes relating to payment or denial of an attorney's fee or costs must be submitted to the hearing officer or arbitrator for decision, but a hearing officer or arbitrator may not order that the maximum fee be exceeded.

SECTION 3. AMENDMENT. Section 65-10-03 of the North Dakota Century Code is amended and reenacted as follows:

65-10-03. Cost of appeal and attorney's fee fixed by the bureau. The bureau shall pay the cost of the judicial appeal and the attorney's fee for an injured employee's attorney when the employee prevails. The employee ~~is deemed to have~~ has prevailed when any part of the decision of the bureau is reversed ~~or the claim is remanded to the bureau for further administrative proceedings~~ and the employee receives an additional benefit as a result. An injured employee does not prevail on a remand for further action or proceedings unless the injured employee ultimately receives an additional benefit. The bureau shall pay the attorney's fee from the bureau general fund. The amount of the attorney's fee must be determined in the same manner as prescribed by the bureau for attorney fees, and the amount of attorney's fee already allowed in administrative proceedings before the bureau must be taken into consideration. The bureau shall establish, pursuant to section

65-02-08, a maximum fee to be paid in an appeal. The maximum fee may be exceeded upon application of the injured employee ~~and approval of the court~~ to the bureau, upon a finding that the claim had clear and substantial merit, and that the legal or factual issues involved in the appeal were unusually complex, but a court may not order that the maximum fee be exceeded. Notwithstanding the foregoing, the bureau is liable for its costs on appeal if the decision of the bureau is affirmed.

Approved April 1, 1997
Filed April 2, 1997

CHAPTER 534**HOUSE BILL NO. 1263**

(Representative Berg)

**WORKERS' COMPENSATION FRAUD
INVESTIGATIONS**

AN ACT to amend and reenact sections 65-02-23, 65-02-25, 65-02-26, and 65-05-33 of the North Dakota Century Code, relating to amnesty periods, disclosure of claim and investigative information in workers' compensation fraud cases, and definition of fraudulent activity; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-02-23 of the North Dakota Century Code is amended and reenacted as follows:

65-02-23. Workers' compensation fraud unit. The bureau shall establish a workers' compensation fraud unit. The bureau may employ investigators and licensed attorneys, or contract with a private investigator whenever feasible or cost effective, to investigate and review any alleged case of ~~willful misrepresentation of payroll to the bureau by an employer as fraud against the fund by employers, injured workers, or providers of medical or other services, including activities described under section 65-04-14 and to investigate and review any alleged case of willful filing of a false claim or false statement in relation to a claim as defined under section 65-05-33.~~ The unit shall refer a case cases of willful misrepresentation of payroll fraud to the bureau or of willful filing of a false claim or false statement for the imposition of administrative penalties and may refer them to the appropriate authorities for prosecution.

SECTION 2. AMENDMENT. Section 65-02-25 of the North Dakota Century Code is amended and reenacted as follows:

65-02-25. Amnesty for certain claims and accounts. After the workers' compensation fraud unit is established, the bureau may offer, not more than once every twelve months, a period of amnesty to any person who has willfully made a false claim or false statement or who has willfully misrepresented payroll, to allow that person the opportunity to close and repay the false claim, to close and repay the claim for which a false statement has been made, or to pay the appropriate premium and penalty on an account for which payroll was misrepresented. The amnesty period may not exceed sixty days. A person who receives amnesty under this section is immune from criminal prosecution relating to those acts for which amnesty is received.

SECTION 3. AMENDMENT. Section 65-02-26 of the North Dakota Century Code is amended and reenacted as follows:

65-02-26. Nondisclosure of investigative information. Any investigative information gathered pursuant to section 65-02-23 is criminal investigative information and may not be disclosed except as provided in section 44-04-18.7. Notwithstanding sections 65-04-15 and 65-05-32, the fraud unit may provide

investigative and claim file information to other fraud investigative and law enforcement entities, and gather investigative and claim file information from them.

SECTION 4. AMENDMENT. Section 65-05-33 of the North Dakota Century Code is amended and reenacted as follows:

65-05-33. Filing false claim or false statements - Penalty.

1. ~~Any~~ A person is guilty of a class A misdemeanor if that person is claiming benefits or payment for services under this title, who willfully and that person:
 - a. Willfully files a false claim or makes a false statement; or,
 - b. Willfully misrepresents that person's physical condition, including deceptive conduct which misrepresents that person's physical ability.
 - c. Has a claim for disability benefits that has been accepted by the bureau and willfully fails to notify the bureau as to of:
 - (1) Work or other activities as required under subsection 3 of section 65-05-08;
 - (2) ~~the~~ The receipt of income, from work; or
 - (3) ~~an~~ An increase in income, from employment, after the issuance of an order awarding benefits, in connection with any claim or application under this title is guilty of a class A misdemeanor, but if work.
2. If any of the act is acts in subsection 1 are committed to obtain, or pursuant to a scheme to obtain, more than five hundred dollars in benefits or payment for services, the offense is a class C felony. Provided further that:
 1. ~~For the purposes of this section, "statement" includes any testimony, claim form, notice, proof of injury, proof of return to work status, bill for services, diagnosis, prescription, hospital or doctor records, x-ray, test results, or other evidence of loss, injury, or expense.~~
2. 3. In addition to any other penalties provided by law, the person claiming benefits or payment for services in violation of this section shall reimburse the bureau for any benefits paid based upon the false claim or false statement and, if applicable, under section 65-05-29 and shall forfeit any additional benefits relative to that injury.
4. For purposes of this section, "statement" includes any testimony, claim form, notice, proof of injury, proof of return to work status, bill for services, diagnosis, prescription, hospital or doctor records, x-ray, test results, or other evidence of loss, injury, or expense.

Approved April 2, 1997
 Filed April 3, 1997

CHAPTER 535**SENATE BILL NO. 2334**

(Senator Christmann)
(Representative Carlson)

**WORKERS' COMPENSATION CLAIM FILE
DESTRUCTION**

AN ACT to create and enact a new section to chapter 65-02 of the North Dakota Century Code, relating to the destruction of workers' compensation claim files.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

Bureau claim files - Destruction. If the bureau determines that a person who has a claim for injury on file has been deceased for at least ten years, the bureau may destroy any claim files for that person. The bureau may not destroy any claim file it specifically has been requested not to destroy. The bureau shall establish a means for maintaining statistical and identifying information for any claim files destroyed under this section.

Approved March 5, 1997
Filed March 6, 1997

CHAPTER 536**SENATE BILL NO. 2074**

(Appropriations Committee)

(At the request of the Workers Compensation Bureau)

**WORKERS COMPENSATION BUREAU PERFORMANCE
AUDITS**

AN ACT to require the workers compensation bureau to submit to independent performance audits on a biennial basis.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Independent audit. The state auditor shall appoint on a biennial basis an independent audit firm, with extensive expertise in workers' compensation practices and standards, to complete a performance audit of the departments of the bureau. The audit must evaluate departments of the bureau, as determined necessary by the state auditor, to determine whether the departments are providing quality service in an efficient and cost-effective manner. The audit report must contain recommendations for departmental improvement or an explanation of why no recommendations are being made. The executive director of the bureau and the auditor shall present the audit report and any action taken as a result to the legislative council's legislative audit and fiscal review committee and to the house and senate industry, business and labor standing committees during the next regular session of the legislative assembly following the audit. The executive director also shall provide a copy of the audit report to the state auditor.

Approved March 19, 1997

Filed March 19, 1997

CHAPTER 537**SENATE BILL NO. 2110**

(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

**WORKERS' COMPENSATION MINE FOREMEN
CERTIFICATION**

AN ACT to create and enact a new section to chapter 65-03 of the North Dakota Century Code, relating to workers compensation bureau rules regarding certification of mine foremen; and to repeal chapter 65-11 of the North Dakota Century Code, relating to the appointment and duties of a safety engineer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 65-03 of the North Dakota Century Code is created and enacted as follows:

Mine foremen - Rules regarding. The bureau may adopt and enforce rules for the qualification, examination, and certification of mine foremen.

SECTION 2. REPEAL. Chapter 65-11 of the North Dakota Century Code is repealed.

Approved March 13, 1997
Filed March 13, 1997

CHAPTER 538**SENATE BILL NO. 2073**

(Industry, Business and Labor Committee)

(At the request of the Workers Compensation Bureau)

VERTERAN TRAINEES AND REPORTS ELIMINATED

AN ACT to repeal sections 65-04-04.1, 65-04-08, and 65-04-09 of the North Dakota Century Code, relating to the determination of the average weekly wage for premium for veteran-on-the-job trainees, county auditor reports to the workers compensation bureau, and reporting public contracts to the workers compensation bureau.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Sections 65-04-04.1, 65-04-08, and 65-04-09 of the North Dakota Century Code are repealed.

Approved March 13, 1997
Filed March 13, 1997

CHAPTER 539**HOUSE BILL NO. 1266**

(Representative Berg)

(Senator Mutch)

WORKERS' COMPENSATION CLAIM FILING

AN ACT to amend and reenact section 65-05-01 of the North Dakota Century Code, relating to the filing of workers' compensation claims; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-01 of the North Dakota Century Code is amended and reenacted as follows:

65-05-01. Claims for ~~compensation~~ benefits - When and where filed. All original claims for ~~compensation~~ benefits must be filed by the injured employee, or someone on the injured employee's behalf, within one year after the injury or within two years after the death. The date of injury for purposes of this section is the ~~actual date of injury when that date can be determined with certainty by the claimant and bureau. When the actual date of injury cannot be determined with certainty, the date of injury is the first date that a reasonable person knew or should have known that the employee suffered a compensable work-related injury and the employee was informed by the employee's treating health care provider that the employee's work activities are a substantial contributing factor in the development of the employee's injury or condition. No compensation or benefits has either lost wages because of a resulting disability or received medical treatment.~~ Notwithstanding a statute of limitations assertion, the claimant bears the burden of proving any entitlement to benefits. If the bureau is estopped from applying the statute of limitations in this section because an employer's willful conduct prevented an injured employee from filing a claim in a timely manner, that employer shall reimburse the bureau for the full amount of all benefits paid during the first five years of that claim. Benefits may not be allowed under this title to any person, except as provided in section 65-05-04, unless that person, or someone on that person's behalf, files a written claim for ~~compensation~~ or benefits within the time specified in this section. A claim must be filed by:

1. Delivering it at the office of the bureau or to any person ~~whom~~ the bureau designates by ~~regulation may designate~~ rule; or
2. Depositing it in the mail properly stamped and addressed to the bureau or to any person ~~whom~~ the bureau designates by ~~regulation may designate~~ rule.

SECTION 2. EFFECTIVE DATE. This section applies to all claims for benefits filed after July 31, 1997, regardless of date of injury.

Approved April 1, 1997
Filed April 2, 1997

CHAPTER 540

HOUSE BILL NO. 1265

(Representative Berg)
(Senator Mutch)

WORKERS' COMPENSATION MEDICAL BENEFITS

AN ACT to amend and reenact section 65-05-07 of the North Dakota Century Code, relating to medical benefits furnished by the workers compensation bureau.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-07 of the North Dakota Century Code is amended and reenacted as follows:

65-05-07. Injured employee given medical and hospital service required - Furnished artificial limbs and appliances for rehabilitation - Fee approval. Immediately after an injury sustained by an employee and during the resulting period of disability, ~~the~~ The fund shall furnish to ~~the~~ an injured employee ~~such~~ reasonable and appropriate medical, surgical, and hospital service and supplies ~~as the nature of the injury may require necessary to treat a compensable injury.~~ The fund may furnish such artificial members and replacements as in the judgment of the bureau may be determines necessary to rehabilitate such an injured employee.

1. The health care provider or ~~physician~~ doctor must be acting within the scope of the provider's or ~~physician's~~ doctor's license or fees will be denied.
2. Fees may not be approved for more than one health care provider or ~~physician, or both,~~ doctor in a case where treatment is provided over the same period of time except for the services of a consulting ~~physician~~ doctor, assistant surgeon, or anesthetist or in an emergency.
3. The bureau, in cooperation with professional organizations of doctors and health care providers, shall establish a system of peer review to determine reasonableness of fees and payment denials for unjustified treatments, hospitalization, or visits. The doctor or health care provider ~~shall have the right to~~ may appeal adverse decisions of the bureau in accordance with the medical aid rules adopted by the bureau.
4. Health care providers ~~or~~ and doctors may not bill an injured workers employee for any services rendered as a result of the compensable work injury.
5. ~~If the~~ The bureau ~~determines that it is necessary~~ may not pay more than twenty thousand dollars to provide permanent additions, remodeling, or adaptations to real estate ~~to those workers it determines necessary for a worker who sustain~~ sustains a catastrophic injury as defined in chapter 65-05.1; such improvements may be made, but may not exceed ten. The twenty thousand dollars dollar limit is for the life of the claimant injured employee, regardless of any subsequent claim. This subsection does not allow the bureau to purchase any real estate or motor vehicles.

6. If a doctor or health care provider who has treated or provided services to an injured employee fails or refuses without just cause to file with the bureau a report required by section 65-05-02, 65-05-08, or 65-05-08.1, within thirty days of examination, treatment, or provision of other services rendered in connection with a compensable work injury, or within thirty days of a request for ~~such the~~ report made by the claimant, the claimant's representative, or the bureau, the bureau shall assess as a penalty a sum of one hundred dollars. Health care providers ~~or~~ and doctors may not bill an injured workers worker for any penalty assessed by the bureau ~~as a result of failure or refusal without just cause to file a required report~~ under this subsection.
7. The filing of an accident report or the rendering of treatment to an injured worker who comes under the bureau's jurisdiction; ~~as the case may be,~~ constitutes acceptance of the bureau's medical aid rules and compliance with its rules and fees.
8. The bureau may not pay for:
 - a. Personal items that are for the injured employee's personal use or hygiene, including toothbrushes, slippers, shampoo, and soap.
 - b. Any product or item such as clothing or footwear unless the items are considered orthopedic devices and are prescribed by the treating doctor or health care provider.
 - c. Any furniture except hospital beds, shower stools, wheelchairs, or whirlpools if prescribed by the treating doctor or health care provider.
 - d. Vitamins and food supplements except in those cases where the injury causes severe dietary problems, where the injury results in the employee's paraplegia or quadriplegia, or where the employee becomes wheelchair-bound due to the injury.
 - e. Eye exams unless there is a reasonable potential for injury to the employee's eyes as a result of the injury.
 - f. Private hospital or nursing home rooms except in cases of extreme medical necessity and only when directed by the attending doctor. If the employee desires better accommodations than those ordered by the attending doctor, the employee will pay the difference in cost.
 - g. Serological tests, including VDRL and RPR, or other tests for venereal disease or pregnancy, or any other routine tests unless clearly necessitated by the injury.
 - h. Aids or programs primarily intended to help the employee lose weight or stop smoking.
 - i. Home gym or exercise equipment unless ordered by the bureau.
 - j. Memberships or monthly dues to health clubs, unless ordered by the bureau.

k. Massage, unless ordered by the bureau.

Approved March 23, 1997

Filed March 24, 1997

CHAPTER 541

HOUSE BILL NO. 1116

(Representative Keiser)

(At the request of the Department of Corrections and Rehabilitation)

ROUGH RIDER INDUSTRIES WORKERS' COMPENSATION COVERAGE

AN ACT to create and enact six new sections to chapter 65-06.2 of the North Dakota Century Code, relating to workers' compensation coverage for inmates engaged in work programs through roughrider industries; to amend and reenact sections 65-05-07.2 and 65-06.2-01 of the North Dakota Century Code, relating to the requirement that employers pay a portion of the medical benefits of workers' compensation claims and to the definition of an inmate; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-07.2 of the North Dakota Century Code is amended and reenacted as follows:

65-05-07.2. Payment to bureau for certain claims. The employer shall reimburse the bureau for all medical expenses related to a compensable injury to an employee if the expenses are not more than two hundred fifty dollars and shall reimburse the bureau for the first two hundred fifty dollars of medical expenses when the expenses are more than two hundred fifty dollars. If an employee's compensable injury is determined through a civil action to have been sustained through the fault or negligence of a third person, or if a settlement has been entered between the employee and a third person through which the third person agrees to compensate the employee for the injury, the bureau, upon receipt of its subrogation interest, shall credit the account of the employer to the extent of the payment made by the employer to the bureau under this section. Upon the bureau's determination that the claim is compensable, the bureau shall pay the medical expenses associated with the claim and notify the employer of payments to be made by the employer under this section. If the employer does not pay the bureau within ninety days of notice by the bureau, the bureau may impose a penalty on that employer. The penalty may not exceed one hundred twenty-five percent of the payment owed by the employer. The bureau shall collect the penalty in a civil action against the employer and deposit the money in the fund. An employer may not directly or indirectly charge an injured employee for any payment the employer makes on a claim. When the cost of an injured employee's medical treatment exceeds two hundred fifty dollars, the bureau shall pay all further medical expenses pursuant to this title. This section is effective for all compensable injuries that occur after July 31, 1995. Compensable injuries paid under sections 3, 4, 5, 6, and 7 of this Act are not subject to this section.

SECTION 2. AMENDMENT. Section 65-06.2-01 of the North Dakota Century Code is amended and reenacted as follows:

65-06.2-01. Inmate defined. For the purposes of ~~this chapter~~ sections 65-06.2-02 and 65-06.2-03, an inmate is a person who is confined against the inmate's will in a city or county penal institution or is a person who, as a criminal

defendant before a court, is ordered or elects to perform public service for a city or county in conjunction with or in lieu of a jail sentence. The term inmate does not include an individual injured while incarcerated in the North Dakota state penitentiary or any of its affiliated facilities or an individual injured in a fight, riot, recreational activity, or other incident not directly related to the inmate's work assignment.

SECTION 3. A new section to chapter 65-06.2 of the North Dakota Century Code is created and enacted as follows:

Workers' compensation coverage for inmates engaged in work programs through roughrider industries. The director of the department of corrections and rehabilitation may elect to provide and request from the bureau a program of modified workers' compensation coverage established under this chapter and according to administrative rules and fee schedules of this chapter. Roughrider industries shall qualify for the bureau's risk management program before the bureau may provide the modified workers' compensation coverage. The modified workers' compensation coverage would be for inmates incarcerated at the penitentiary and engaged in work in a prison industries work program through roughrider industries, whether the program is operated by roughrider industries or by contract with another entity or private employer. An inmate who sustains a compensable injury arising out of and in the course of work in a prison industries work program through roughrider industries may only receive workers' compensation benefits under the modified workers' compensation coverage established for that purpose.

SECTION 4. A new section to chapter 65-06.2 of the North Dakota Century Code is created and enacted as follows:

Modified coverage of inmates engaged in work programs through roughrider industries - Conditions. Except as otherwise provided in this chapter, all claims for workers' compensation benefits under this section and sections 3, 5, and 7 of this Act are subject to title 65. A claim under this section and sections 3, 5, and 7 of this Act must be filed according to section 65-05-01. While an inmate is incarcerated at the penitentiary, the penitentiary shall pay the reasonable medical expenses of that inmate at penitentiary medical payment levels, if that inmate incurs a compensable injury while working in a prison industries work program through roughrider industries. If an inmate sustains a compensable injury while working in a prison industries work program through roughrider industries, disability, vocational rehabilitation allowance, and permanent partial impairment benefits may not accrue or be paid while the inmate is incarcerated and may only be paid after the inmate is discharged from the penitentiary. If the director of the department of corrections and rehabilitation and the bureau determine that an inmate who suffers a compensable injury under this chapter is in need of vocational rehabilitation services while the inmate is incarcerated, the penitentiary and the bureau may provide vocational rehabilitation services to the inmate. An injury resulting from a fight, riot, recreational activity, or other activity or incident other than the inmate's actual performance of work duties in a prison industries work program through roughrider industries is not compensable under this title.

SECTION 5. A new section to chapter 65-06.2 of the North Dakota Century Code is created and enacted as follows:

Rulemaking - Excess or reinsurance coverage. The bureau, in cooperation with the department of corrections and rehabilitation and the risk management division of the office of management and budget, shall adopt administrative rules and fee schedules for a program of modified workers' compensation coverage

established and provided under this section and sections 3, 4, and 7 of this Act. The administrative rules and fee schedules must provide for the classification of inmates engaged in work in a prison industries work program through roughrider industries, the computation of premium, the payment of claims charges against the classification, the payment of medical bills, excess coverage or reinsurance, and the reimbursement by roughrider industries to the bureau for all claim benefit costs charged against that classification, as well as any allocated loss adjustment expense and all administrative expenses, including the expense of issuing the coverage, for the life of the claim in excess of premiums and medical expenses paid by roughrider industries. Roughrider industries shall secure excess coverage or shall reinsure all excess risks through the risk management division to cover the costs in excess of premiums and medical expenses paid. The risk management division shall assess a premium against roughrider industries for the cost of excess or reinsurance coverage and roughrider industries shall pay that premium.

SECTION 6. A new section to chapter 65-06.2 of the North Dakota Century Code is created and enacted as follows:

State reimbursement for liability in excess of collected premiums. Whenever total costs and expenses charged to the classification of the modified workers' compensation program established under this chapter exceeds the amount of premiums paid into the fund and any policy limits of the reinsurance or excess coverage purchased under section 5 of this Act, those excess costs and expenses are a general obligation of the state and the state shall reimburse the bureau for credit to the workers' compensation fund through legislative appropriation. Roughrider industries shall secure a means of reinsuring excess costs and expenses to minimize exposure of loss to the state general fund. The bureau may not provide the additional excess coverage or reinsurance required under this section. This modified workers' compensation coverage may not be effective unless the excess coverage or reinsurance required under this section is in place.

SECTION 7. A new section to chapter 65-06.2 of the North Dakota Century Code is created and enacted as follows:

No liability for damages - Inmates are not employees. The state and its employees, and the department of corrections and rehabilitation and its divisions, departments, and employees may not be held liable for damages at common law or by statute if an inmate covered under a program of modified workers' compensation coverage under this chapter sustains a compensable injury while working in a prison industries work program through roughrider industries. An inmate covered under a program of modified workers' compensation coverage under this chapter is not an employee of the state or the department of corrections and rehabilitation and its divisions and departments except for the purpose of modified workers' compensation coverage under this chapter.

SECTION 8. A new section to chapter 65-06.2 of the North Dakota Century Code is created and enacted as follows:

Safety and performance audit. The bureau shall perform a safety audit of the roughrider industries work programs covered under this chapter and a performance audit of the program of modified workers' compensation coverage. The bureau shall submit a report with recommendations based on the safety and performance audit to an interim committee designated by the legislative council no later than thirty days before the commencement of each regular session of the legislative assembly.

SECTION 9. EXPIRATION DATE. This Act is effective through June 30, 2003, and after that date is ineffective.

Approved April 10, 1997

Filed April 10, 1997

CHAPTER 542**HOUSE BILL NO. 1264**

(Representative Berg)

(Senator Mutch)

WORKERS' COMPENSATION DISABILITY BENEFITS

AN ACT to create and enact a new section to chapter 65-05 of the North Dakota Century Code, relating to payment of preacceptance disability benefits to an employee who allegedly suffers a work-related injury; to amend and reenact sections 65-05-08, 65-05-08.1, 65-05-09, 65-05-10, and 65-06.2-02 of the North Dakota Century Code, relating to payment of workers' compensation disability benefits and payments to confined workers; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-08 of the North Dakota Century Code is amended and reenacted as follows:

65-05-08. ~~Compensation not~~ Disability benefits - Not paid unless period of disability is of five days' duration or more - Application required - Suspended during confinement - Duty to report wages. ~~No compensation~~ benefits may be paid for ~~total or partial~~ disability, the duration of which is less than five consecutive calendar days. If the period of ~~total or partial~~ disability is ~~of~~ five consecutive calendar days' duration or ~~more longer~~, compensation benefits must be paid for the period of disability provided that:

1. ~~If the period of disability is for not more than fourteen days, disability benefits for the first five days may only be paid for days that the employee was scheduled to work.~~
 2. When ~~partial or total~~ disability benefits are discontinued, the ~~claimant shall provide the bureau written notice of bureau may not begin~~ payment again unless the injured employee files a reapplication for disability benefits on a form supplied by the bureau. In case of reapplication, the award may commence no more than thirty days before the date of reapplication. Disability benefits must be reinstated upon a finding proof by the injured employee that:
 - a. The employee has sustained a significant change in the compensable medical condition shown by a preponderance of the evidence;
 - b. The employee has ~~provided evidence of sustained an~~ actual wage loss attributable to the work injury caused by the significant change in the compensable medical condition; and
 - c. The employee has not retired or voluntarily withdrawn from the job market as defined in section 65-05-09.3.
3. 2. All payments of disability and rehabilitation benefits must be suspended during the period of confinement in excess of seventy-two consecutive

hours of any employee who is eligible for, or receiving, benefits under this title who is confined in a penitentiary, jail, youth correctional facility, or any other penal institution under conviction and sentence unless the employee is receiving permanent total disability benefits or the bureau has determined that none of the priority options under subsection 4 of section 65-05.1-04 are viable, and the employee has a spouse or child, in which case the benefits must be paid directly to such spouse or child. After discharge from the institution, payment of the bureau shall pay subsequent disability or rehabilitation benefits thereafter due must be paid as the employee otherwise would; but for the provisions of this subsection, otherwise be entitled under this title.

4. 3. Any employee who is eligible for, or receiving, disability or rehabilitation benefits under this title shall report any wages earned, from part-time or full-time employment, work from the employer of injury or any other employer any source. ~~Failure~~ If an employee fails to report such wages earned requires, the employee ~~to shall~~ refund to the bureau any ~~partial or total~~ disability or vocational rehabilitation benefits overpaid by the bureau for that time period. To facilitate recovery of those benefits, the bureau may offset future benefits otherwise payable, under section 65-05-29. If the bureau determines that the failure employee willfully failed to report wages earned was willful, the employee forfeits all further ~~lost-time~~ benefits otherwise payable under this title for that injury ~~pursuant~~ is subject to the penalties in section 65-05-33. An employee shall report whether the employee has performed work or received wages. The bureau shall periodically provide a form to all injured employees receiving disability or rehabilitation benefits that the injured employee must complete to retain eligibility for further disability or rehabilitation benefits. The form will advise the injured employee of the possible penalties for failure to report any work or activities as required by this section. An injured employee who is receiving disability or vocational rehabilitation benefits must report any work activities to the bureau whether or not the injured employee receives any wages. An injured employee who is receiving disability or vocational rehabilitation benefits also must report any other activity if the injured employee receives any money, including prize winnings, from undertaking that activity, regardless of expenses or whether there is a net profit. For purposes of this subsection, "work" does not include routine daily activities of self-care or family care, or routine maintenance of the home and yard, and "activities" does not include recreational gaming or passive investment endeavors.
5. 4. An employee shall request disability benefits on a ~~lost-time~~ claim form furnished by the bureau. ~~In no case may lost-time~~ Disability benefits may not commence more than one year prior to the date of filing of the initial lost-time claim form for disability benefits.
6. 5. The provisions of this section apply to any disability claim asserted against the fund on or after July 1, 1991, irrespective of injury date.
6. It is the burden of the employee to show that the inability to obtain employment or to earn as much as the employee earned at the time of injury is due to physical limitation related to the injury, and that any wage loss claimed is the result of the compensable injury.

7. If the employee voluntarily limits income or refuses to accept employment suitable to the employee's capacity, offered to or procured for the employee, the employee is not entitled to any disability or vocational rehabilitation benefits during the limitation of income or refusal to accept employment unless the bureau determines the limitation or refusal is justified.
8. The bureau may not pay disability benefits unless the loss of earning capacity exceeds ten percent. The injured employee may earn up to ten percent of the employee's preinjury average gross weekly earnings with no reduction in total disability benefits. The employee must report any earnings to the bureau for a determination of whether the employee is within the limit set in this subsection.
9. Upon securing suitable employment, the injured employee shall notify the bureau of the name and address of the employer, the date the employment began, and the amount of wages being received. If the injured employee is receiving disability benefits, the injured employee shall notify the bureau whenever there is a change in work status or wages received.
10. The bureau shall pay to an employee receiving disability benefits a dependency allowance for each child of the employee at the rate of ten dollars per week per child. Effective July 1, 1989, this rate must be paid to each eligible employee regardless of the date of injury.
11. Dependency allowance for the children may be made directly to either parent or guardian at the discretion of the bureau.

SECTION 2. AMENDMENT. Section 65-05-08.1 of the North Dakota Century Code is amended and reenacted as follows:

65-05-08.1. Verification of ~~temporary total~~ disability.

1. ~~The claimant's~~ An injured employee's doctor shall certify the period of ~~temporary total~~ disability ~~upon request of the bureau~~ and the extent of the injured worker's abilities and restrictions.
2. A doctor certifying disability shall include in the report filed with the bureau:
 - a. The medical basis established by medical evidence supported by objective medical findings for the certification of disability;
 - b. Whether the employee is totally disabled, ~~from any and all employment,~~ or, if the employee is not totally disabled, whether the employee is able to return to ~~some~~ any employment, ~~including light work or sedentary work~~ and a statement of the employee's restrictions and physical limitations; and
 - c. ~~If the employee is not totally disabled, a statement of the employee's restrictions and physical limitations; and~~
 - d. A professional opinion as to the expected length of, and reason for, the disability.

- e. d. A doctor may not certify or verify past disability ~~unless the doctor has examined~~ commencing more than sixty days before the doctor's examination of the employee within the previous sixty days and filed these reports required by this title.
3. The report must be filed on a form furnished by the bureau, or on any other form acceptable to the bureau.
 4. The ~~claimant~~ injured employee shall ensure that the required reports for any period of disability are filed.
 5. Prior to the expiration of a period of ~~temporary total~~ disability certified by a doctor, if a report certifying an additional period of disability has not been filed, or upon receipt of a report or other evidence indicating an injured employee who is receiving disability benefits has been or will be released to return to work, the bureau shall send a notice to ~~the claimant~~ that employee of the bureau's intention to discontinue benefits, the reason therefor, and including an explanation of the reason for discontinuing benefits, an explanation of the employee's right to respond, and the procedure for filing the required report or challenging the proposed action. A copy of the notice must be mailed to the ~~claimant's~~ employee's doctor. Thereafter, if the required certification is not filed, the bureau shall discontinue ~~temporary total~~ disability benefits by formal order, effective no sooner than twenty-one days after the date of the notice of intention to discontinue benefits is mailed or the date on which the employee actually returned to work, whichever occurs first.
 6. ~~Upon receipt of a report or other evidence indicating a claimant who is receiving temporary total disability benefits has been or will be released to return to work, the bureau shall issue and mail to the claimant a notice of intention to discontinue benefits. Such benefits may thereafter be discontinued on the date of release to return to work or twenty-one days following mailing of the notice, whichever is later. The notice must include a statement of the reason for the action, a brief summary of the evidence relied upon by the bureau, and an explanation of the right to respond and the procedure for challenging the action and submitting additional evidence to the bureau.~~

SECTION 3. AMENDMENT. Section 65-05-09 of the North Dakota Century Code is amended and reenacted as follows:

65-05-09. Temporary total or permanent total disability - Weekly and aggregate ~~compensation~~ benefit. If an injury causes temporary total or permanent total disability, the fund shall pay to the disabled employee during such that disability a weekly ~~compensation~~ benefit equal to sixty-six and two-thirds percent of the gross weekly wage of the ~~claimant~~ employee, subject to a minimum of sixty percent and a maximum of one hundred percent of the average weekly wage in the state. If an employee is disabled due to an injury, that employee's benefits will be based upon the employee's wage and the bureau benefit rates in effect on the date of first disability.

1. If an employee suffers disability but is able to return to employment for a period of twelve consecutive calendar months or more, that employee's benefits will be based upon the wage in effect at the time of the recurrence of the disability or upon the wage that employee received

prior to the injury, whichever is higher; ~~and the.~~ The bureau benefit rates shall be are those in effect at the time of that recurrence.

2. ~~In case of permanent total or temporary total disability, there must be paid to such disabled employee an additional dependency allowance for each child of the employee at the rate of ten dollars per week per child. Effective July 1, 1989, this rate must be paid to each eligible employee regardless of the date of injury.~~
3. ~~Dependency allowance for the children may be made directly to either parent or guardian at the discretion of the bureau.~~
4. ~~In no case may the compensation~~ The disability benefit or the combined compensation disability benefit and dependency award may not exceed the weekly wage of the employee after deductions for social security and federal income tax.
5. ~~3.~~ When an employee who is permanently and totally disabled and, must be maintained in a nursing home or similar facility, and has no dependent parent, spouse, or children, part or all as much of that employee's weekly compensation benefit as is necessary may be used by the bureau to help defray the cost of such the nursing home care.

SECTION 4. A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

Preacceptance disability benefits. If, after receiving a claim for benefits, the bureau determines that more information is needed to process the claim, but that the information in the file indicates the injured employee is more likely than not entitled to disability benefits, the bureau may pay preacceptance disability benefits equal to the minimum weekly disability benefit allowed under section 65-05-09. The bureau may continue to pay preacceptance disability benefits to the employee during the period the claim is pending, unless the injured employee is not cooperating with requests from the bureau for additional information needed to process the claim. The bureau may not pay more than sixty days of preacceptance benefits. The bureau may only recover a payment made to an injured employee under this section if that recovery is allowed under section 65-05-33. There is no appeal from a bureau decision not to pay preacceptance disability benefits.

SECTION 5. AMENDMENT. Section 65-05-10 of the North Dakota Century Code is amended and reenacted as follows:

65-05-10. Partial disability - Weekly ~~compensation~~ benefit. If the injury causes temporary partial disability resulting in decrease of earning capacity, the ~~compensation~~ disability benefit is sixty-six and two-thirds percent of the difference between the injured employee's average weekly wages before the injury and the employee's wage earning capacity after the injury in the same or another employment. However, the partial disability benefits plus dependency allowance and earning capacity may not exceed the weekly wage of the employee after deductions for social security and federal and state income tax benefit rates as defined in section 65-05-09.

1. ~~It is the burden of the employee to show that the inability to obtain employment or to earn as much as the employee earned at the time of injury, is due to physical limitation related to the injury, and that any wage loss claimed is the result of the compensable injury.~~

2. If the employee voluntarily limits income or refuses to accept employment suitable to the employee's capacity, offered to or procured for the employee, such employee is not entitled to any compensation at any time during the continuance of such refusal unless, at any time, such refusal is justified in the opinion of the bureau.
3. No compensation is payable unless the loss of earning capacity exceeds ten percent. The claimant may earn up to ten percent of the claimant's average gross weekly earnings with no reduction in total disability benefits.
4. Upon securing suitable employment, the injured employee shall notify the bureau of the name and address of the employer, the date the employment began, and the amount of wages being received on an annual basis. The injured employee shall notify the bureau whenever there is a change in wages received.
5. The benefits provided by this section are available to any otherwise eligible worker, providing the loss of earning capacity occurs after July 1, 1989. Partial loss of earning capacity occurring prior to July 1, 1989, must be paid at a rate to be fixed by the bureau.
6. Dependency allowance must be paid under section 65-05-09 on claims receiving benefits under this section.
7. 2. Benefits must be paid during the continuance of partial disability, not to exceed a period of five years. The bureau may waive the five-year limit on the duration of partial disability benefits in cases of catastrophic injury as defined in section 65-05.1-06.1 or when the injured worker is working and has long-term restrictions verified by clear and convincing objective medical and vocational evidence that limits the injured worker to working less than twenty-eight hours per week because of the compensable work injury. This subsection is effective for partial loss of earnings capacity occurring after June 30, 1991.
8. 3. The employee's earnings capacity may be established by expert vocational evidence of a capacity to earn in the statewide job pool where the worker lives. Actual postinjury earnings are presumptive evidence of earnings capacity where the job employs the employee to full work capacity in terms of hours worked per week, and where the job is in a field related to the employee's transferable skills. The presumption may be rebutted by competent evidence from a vocational expert that the employee's actual earnings do not fairly reflect the employee's earnings capacity in the statewide job pool, considering the employee's capabilities, education, experience, and skills.

SECTION 6. AMENDMENT. Section 65-06.2-02 of the North Dakota Century Code is amended and reenacted as follows:

65-06.2-02. Coverage of inmates - Conditions.

1. If an inmate in performance of work in connection with the maintenance of the institution, or with any industry maintained ~~therein~~ within the institution, or with any public service activity, sustains a compensable injury, the inmate may; ~~upon being released from the institution; or after discharge from public service;~~ be awarded and paid compensation

benefits under the ~~provision~~ provisions of this title, upon being released from the institution or after discharge from public service.

2. Claims under this chapter ~~shall~~ must be filed and processed pursuant to section 65-05-01, except that an inmate ~~shall~~ also ~~have~~ has one year from the date of first release from the institution or discharge from public service to file a claim.
3. Workers' compensation benefits under this chapter accrue and are payable from the time of the inmate's release from the institution or after discharge from public service. Disability benefits must be computed according to the methods provided in chapter 65-05. The inmate's weekly wage must be computed using either the actual wage paid to the inmate or the federal minimum wage as of the date of injury, whichever is higher.
4. If a former inmate receiving disability benefits under the provisions of this chapter is recommitted or sentenced by a court to imprisonment in a penal institution, the disability benefits are payable pursuant to subsection ~~3~~ 2 of section 65-05-08.

SECTION 7. EFFECTIVE DATE. Subsection 2 of section 1 of this Act is effective for all confined employees whose period of confinement begins after July 31, 1997, regardless of the date of injury. Subsection 2 of section 5 of this Act is effective for all determinations made after July 31, 1997, regardless of the date of injury. The remainder of section 1, sections 2 and 3, the remainder of section 5, and section 6 are effective for all claims, regardless of the date of injury. Section 4 of this Act is effective for all claims filed after July 31, 1997.

SECTION 8. EXPIRATION DATE. Section 4 of this Act is effective through July 31, 1999, and after that date is ineffective.

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 543

SENATE BILL NO. 2125

(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

WORKERS' COMPENSATION DISABILITY AND RETIREMENT EFFECT

AN ACT to create and enact a new section to chapter 65-05 of the North Dakota Century Code, relating to additional benefits for recipients of workers' compensation disability benefits; to amend and reenact section 65-05-09.3 of the North Dakota Century Code, relating to discontinuance of workers' compensation benefits upon retirement; to provide for retroactive application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

Additional benefit payable. If an injured employee's benefits cease under subsection 2 of section 65-05-09.3, the bureau shall pay to that employee every twenty-eight days a benefit based on the length of time the injured employee received disability benefits during the term of that claim. The bureau shall pay the injured employee's additional benefits until the employee's death or for a period of time not to exceed the total length of time the employee received disability benefits under sections 65-05-08, 65-05-08.1, 65-05-09, and 65-05-10, and a vocational rehabilitation allowance under chapter 65-05.1, for that claim, whichever occurs first. The benefit is based on the disability benefit that was discontinued under subsection 2 of section 65-05-09.3, which is the injured employee's compensation rate less any applicable social security offset. The percentage of that final payment payable as the additional benefit is:

At least 1 year and less than 3 years of disability	5 percent of weekly benefit
At least 3 years and less than 5 years of disability	10 percent of weekly benefit
At least 5 years and less than 7 years of disability	15 percent of weekly benefit
At least 7 years and less than 9 years of disability	20 percent of weekly benefit
At least 9 years and less than 11 years of disability	25 percent of weekly benefit
At least 11 years and less than 13 years of disability	30 percent of weekly benefit
At least 13 years and less than 15 years of disability	35 percent of weekly benefit
At least 15 years and less than 17 years of disability	40 percent of weekly benefit
At least 17 years and less than 20 years of disability	45 percent of weekly benefit
Twenty or more years of disability	50 percent of weekly benefit.

However, the bureau shall pay to an injured employee who has been determined to be catastrophically injured as defined by subdivision c of subsection 2 of section 65-05.1-06.1 an additional benefit, until the death of the employee, equal to one hundred percent of the final payment of the disability benefit that was discontinued under subsection 2 or 3 of section 65-05-09.3.

SECTION 2. AMENDMENT. Section 65-05-09.3 of the North Dakota Century Code is amended and reenacted as follows:

65-05-09.3. Retirement presumption - Termination of benefits upon retirement.

1. An employee who has retired or voluntarily withdrawn from the labor force and who ~~is, at that time, was~~ not eligible to receive temporary total disability, temporary partial disability, or permanent total disability benefits, or a rehabilitation allowance from the bureau is presumed retired from the labor market. The presumption may be rebutted by a preponderance of the evidence; however, the subjective statement of an employee that the employee is not retired is not sufficient in itself to rebut objective evidence of retirement.
2. An injured employee ~~who is receiving permanent total, temporary total, or temporary partial disability benefits, or rehabilitation benefits, and who begins receiving social security retirement benefits or other retirement benefits in lieu of social security retirement benefits, or who is at least sixty five years old and is eligible to receive social security retirement benefits or other retirement benefits in lieu of social security retirement benefits, or who attains retirement age for social security retirement benefits unless the employee proves the employee is not eligible to receive social security retirement benefits or other benefits in lieu of social security retirement benefits is considered to be retired.~~ The bureau may not pay any ~~permanent total, temporary total, or temporary partial~~ disability benefits, rehabilitation benefits, or ~~supplemental supplementary~~ benefits to an employee who is considered retired; however, ~~the bureau is liable~~ employee remains eligible for payment of medical benefits and, permanent partial impairment benefits, and the additional benefit payable under section 1 of this Act. ~~An employee who is determined to be catastrophically injured as defined by subdivision e of subsection 2 of section 65-05.1-06.4 is not subject to this section.~~
3. The bureau retains liability for disability benefits, rehabilitation benefits, permanent partial impairment benefits, and medical benefits for an injured employee who is ~~eligible to receive~~ receiving social security retirement benefits or other retirement benefits in lieu of social security retirement benefits or who attains retirement age for social security retirement benefits unless the employee is not eligible to receive social security retirement benefits or other benefits in lieu of social security retirement benefits and who is gainfully employed; and who suffers an injury arising out of and in the course of that employment. The bureau may not pay disability or rehabilitation benefits under this subsection for more than three years, subject to section 65-05-09.2, for injuries occurring after the effective date for this Act.
4. This section applies to all persons who ~~retire or become eligible for~~ begin receiving social security retirement benefits or other retirement benefits in lieu of social security retirement benefits, or who attain retirement age for social security retirement benefits unless the employee proves the employee is not eligible to receive social security retirement benefits or other benefits in lieu of social security retirement benefits, after July 31, 1995.

SECTION 3. RETROACTIVE APPLICATION. This Act applies retroactively to August 1, 1995.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 13, 1997
Filed March 13, 1997

CHAPTER 544

HOUSE BILL NO. 1261

(Representative Berg)

(Senator Mutch)

WORKERS' COMPENSATION AGGRAVATION AWARDS

AN ACT to amend and reenact section 65-05-15 of the North Dakota Century Code, relating to payment of work-related injuries on an aggravation basis.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-15 of the North Dakota Century Code is amended and reenacted as follows:

65-05-15. Aggravation awards. ~~The~~ When a compensable injury combines with a noncompensable injury, disease, or other condition, the bureau shall calculate an aggravation award in case of aggravation of a preexisting condition, disease, or infirmity by a compensable injury, and in case of aggravation of a compensable injury by a nonemployment injury award benefits on an aggravation basis, on the following terms:

1. ~~A "preexisting condition" means disability or impairment known in advance of the work injury. It is sufficient to invoke the aggravation statute if the preexisting condition is active at the time of the work injury, evidenced by work restriction (active disability) or interference with function (active impairment).~~
2. ~~In cases of preexisting a prior injury, disease, or other condition, aggravated, known in advance of the work injury, which has caused previous work restriction or interference with physical function the progression of which is substantially accelerated by, or the severity of which is substantially worsened by, a compensable injury, the bureau shall pay medical expense to treat benefits during the period of acute injury care in full. If evidence establishes that the preexisting condition has combined with the work injury, and will necessitate further treatment beyond the acute stage, an aggravation award may be invoked as to the remainder of the medical expense award. Likewise, the bureau shall pay temporary total disability to the worker, during the acute disability phase, in full. When the worker reaches maximum medical recovery, and is awarded permanent partial impairment, partial disability, permanent total disability, or vocational retraining services, and the evidence establishes that the preexisting condition has combined with the work injury to produce the continuing disability, an aggravation award may be invoked. The period of acute care is presumed to be sixty days immediately following the compensable injury, absent clear and convincing evidence to the contrary. Following the period of acute care, the bureau shall pay benefits on an aggravation basis.~~
3. ~~2.~~ In case of aggravation of If the progression of a prior compensable injury is substantially accelerated by, or the severity of the compensable

injury is substantially worsened by a nonemployment noncompensable injury, the aggravation statute may be invoked where the nonemployment injury acts upon the prior compensable injury, and substantially contributes to the severity, acceleration, or progression of the final result, or, if it acts as a trigger to produce recurrent symptoms, and the trigger is itself a substantial aggravating or accelerating factor. All benefits may be apportioned when the aggravation statute is invoked under this subsection. The aggravation statute may not be invoked if the result is but a natural progression of the compensable injury disease, or other condition, the bureau shall pay benefits on an aggravation basis.

4. 3. The bureau shall determine the pay benefits on an aggravation award based upon all evidence, as reasonably establishes basis as a percentage of the benefits to which the injured worker would otherwise be entitled, equal to the proportion or percentage of cause as is reasonably of the resulting condition that is attributable to the compensable injury. If the degree of Benefits payable on an aggravation cannot be determined, the percentage award must be basis are presumed to be payable on a fifty percent of the total benefits recoverable if one hundred percent of the injury had been the result of employment basis. The party asserting a percentage other than the presumed fifty percent may rebut the presumption with clear and convincing evidence to the contrary.
5. 4. Compensation paid on the basis of aggravation may not be less than ten dollars per week unless the actual wages of the claimant were less than ten dollars, in which event the actual wages must be paid in compensation. In case of death due to an employment aggravation condition, burial expenses and special benefits must be paid in full under sections 65-05-17 and 65-05-26. Dependency allowance may not be reduced by the percentage of aggravation and must be paid in full under section 65-05-09. When an injured worker is entitled to benefits on an aggravation basis, the bureau shall still pay costs of vocational rehabilitation, burial expenses under section 65-05-26, and dependency allowance on a one hundred percent basis.

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 545

SENATE BILL NO. 2116

(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

WORKERS' COMPENSATION DEATH BENEFITS

AN ACT to create and enact a new section to chapter 65-05 of the North Dakota Century Code, relating to payment of workers compensation benefits to and scholarships for spouses and dependent children of employees who have died as the result of work-related injuries; to amend and reenact sections 65-05-16, 65-05-17, 65-05-26, and 65-05.2-02 of the North Dakota Century Code, relating to benefits for dependents of employees who have died as a result of work-related injuries; to repeal section 65-05-23 of the North Dakota Century Code, relating to apportionment of benefits in certain death cases; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-16 of the North Dakota Century Code is amended and reenacted as follows:

65-05-16. Death benefits ~~not payable unless death occurs within one year after cessation of disability and six years after injury.~~

1. ~~No~~ The bureau may pay benefits ~~payable~~ under ~~the provisions of~~ this chapter in the case of the death of an employee as the direct result of an injury sustained in the course of the employee's employment ~~shall be paid unless~~ when:
 1. a. If there has been no disability preceding death, the death occurs within one year after the date of the injury;
 2. b. If there has been disability preceding death, the death occurs within one year after the cessation of disability resulting from the injury; or
 3. c. If there has been disability which has continued to the time of death, the death occurs within six years after the date of injury.
4. ~~2. In all events no~~ The bureau may not pay death benefits ~~shall be payable~~ unless a claim is submitted within two years of the death and:
 - a. The death is a direct result of an accepted compensable injury; or
 - b. If no claim was submitted by the deceased, the claim for death benefits is submitted within two years of the injury.

SECTION 2. AMENDMENT. Section 65-05-17 of the North Dakota Century Code is amended and reenacted as follows:

65-05-17. Weekly compensation allowances for death claims. If death results from an injury under the conditions specified in section 65-05-16, the fund shall pay to the following persons, for the periods specified, a weekly compensation:

1. To the decedent's spouse or to the guardian of the orphaned child or children of the decedent, an amount equal to sixty-six and two-thirds percent of the weekly wage of the deceased decedent, at the bureau's benefit rate in effect on the date of death, and not to exceed two hundred ten dollars per week the state's average weekly wage in effect at the time of the death. These benefits continue until the death or remarriage of the decedent's spouse; or, in the case if the surviving children of the decedent are under the care of a guardian, until the orphaned child or those children of the decedent no longer meet the definition of child "child" in this title. Where if there is more than one orphaned child of a guardian for the children who survive the decedent, the bureau shall divide the death benefits must be divided equally among the children and shall pay benefits to the children's guardians. In no case may total Total weekly death benefits paid may not be less than fifty sixty percent of the maximum weekly death benefits payable. In no case may total Total death benefits, including supplementary benefits, paid on any one claim may not exceed one hundred ninety-seven thousand dollars as a result of any employee's death.
2. To each child of the deceased employee, the amount of ten dollars per week for each child. This rate must be paid to each eligible child regardless of the date of death. The bureau; in its discretion, may make this payment pay the benefit directly to the child of the deceased employee or to the surviving parent or guardian of the child. Dependency allowance may not be reduced by the percentage of aggravation and must be paid in full.
3. In addition to the payments herein provided under subsections 1 and 2, the bureau shall make a payment in the sum of three six hundred dollars to the decedent's spouse or the guardian of the orphaned child or children of the deceased decedent and one two hundred dollars for each dependent child. Where there is more than one guardian of orphaned the decedent's surviving children, the three six hundred dollars must be divided equally among the children and paid to the children's guardians.

SECTION 3. A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

Scholarship fund - Rules. The bureau may establish a scholarship fund to provide scholarships for the spouse and dependent children of a worker who dies as a result of a compensable work-related injury, if the spouse and children have received benefits under section 65-05-17. Scholarships are payable to an accredited institution of higher education or an institution of technical education on behalf of a student attending that institution. The total amount awarded annually in scholarships may not exceed one hundred thousand dollars. The maximum amount payable on behalf of an applicant is one thousand five hundred dollars per year for no more than five years. Scholarships must be awarded by a panel chosen by the bureau. The bureau shall adopt rules establishing selection criteria and obligations associated with the program.

SECTION 4. AMENDMENT. Section 65-05-26 of the North Dakota Century Code is amended and reenacted as follows:

65-05-26. Bureau burial Burial expenses. If death results from an injury ~~within six years~~ benefits are payable under section 65-05-16, the fund shall pay to the ~~personal representatives~~ facility handling the funeral arrangements of the deceased employee burial expenses not to exceed ~~two thousand five hundred thousand~~ thousand dollars.

SECTION 5. AMENDMENT. Section 65-05.2-02 of the North Dakota Century Code is amended and reenacted as follows:

65-05.2-02. Supplementary benefits - Amount. ~~Claimants~~ A claimant who ~~are is~~ eligible for supplementary benefits and who ~~are is~~ receiving permanent total disability benefits ~~are or~~ death benefits is entitled to receive a weekly supplementary benefit ~~such that,~~ when added to ~~their~~ the weekly permanent total disability benefit ~~or death benefit,~~ results in a combined benefit of at least sixty percent of the state's average weekly wage on July first of each year ~~is their combined benefit.~~ ~~Claimants~~ who are eligible for supplementary benefits and who are receiving death benefits are entitled to receive a weekly supplementary benefit such that, when added to their weekly death benefit, at least fifty percent of the maximum death benefit on July first of each year is their combined benefit. ~~In no case may the.~~ An annual recalculation of supplemental supplementary benefits may not result in a rate less than the previous rate; notwithstanding an error in calculation. If a claim has been accepted on an aggravation basis ~~pursuant to~~ under section 65-05-15 and the ~~injured employee~~ claimant is eligible for supplementary benefits, the claimant's supplementary benefit must be proportionally calculated.

SECTION 6. REPEAL. Section 65-05-23 of the North Dakota Century Code is repealed.

SECTION 7. EFFECTIVE DATE. Sections 1, 2, 4, 5, and 6 of this Act are effective for all claims for death benefits filed after July 31, 1997. Section 3 of this Act is effective August 1, 1997, for all persons who have received benefits under section 65-05-17, regardless of the date eligibility for those benefits began, and is effective through July 31, 2001, and after that date is ineffective.

Approved April 8, 1997
Filed April 8, 1997

CHAPTER 546

HOUSE BILL NO. 1262

(Representative Berg)
(Senator Mutch)

WORKERS' COMPENSATION VOCATIONAL REHABILITATION

AN ACT to amend and reenact subsection 4 of section 65-05.1-01, subsection 3 of section 65-05.1-02.1, subsections 4 and 6 of section 65-05.1-04, and section 65-05.1-06.1 of the North Dakota Century Code, relating to workers' compensation vocational rehabilitation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 65-05.1-01 of the North Dakota Century Code is amended and reenacted as follows:

4. The first appropriate option among the following, calculated to return the employee to substantial gainful employment, must be chosen for the employee:
 - a. Return to the same position.
 - b. Return to the same occupation, any employer.
 - c. Return to a modified position.
 - d. Return to a modified or alternative occupation, any employer.
 - e. Return to an occupation ~~in~~ within the local job pool of the locale in which the claimant was living at the date of injury or of the employee's current address which is suited to the employee's education, experience, and marketable skills.
 - f. Return to an occupation in the statewide job pool which is suited to the employee's education, experience, and marketable skills.
 - g. On-the-job training.
 - h. Short-term retraining of fifty-two weeks or less.
 - i. Long-term retraining of one hundred four weeks or less.
 - j. Self-employment.

SECTION 2. AMENDMENT. Subsection 3 of section 65-05.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

3. The vocational consultant's report is due within sixty days from the ~~initial referral for rehabilitation~~ date the vocational assessment is performed under this chapter. However, where the vocational

consultant determines that short-term or long-term training options must be evaluated because higher priority options are not viable, the final report is due within ninety days of the ~~initial~~ vocational assessment to allow the employee to assist in formulating the choice among the qualified training programs.

SECTION 3. AMENDMENT. Subsections 4 and 6 of section 65-05.1-04 of the North Dakota Century Code are amended and reenacted as follows:

4. If the first appropriate rehabilitation option under subsection 4 of section 65-05.1-01 is return to the same, modified, or alternative occupation, or return to an occupation that is suited to the employee's education, experience, and marketable skills, or on-the-job training, the employee is responsible to make a good faith work trial or work search. If the employee fails to perform a good faith work trial ~~or work search, the finding of nondisability or partial disability is res judicata, and the bureau may not reinstate temporary total pay additional~~ disability benefits or recalculate an award of partial disability benefits in the absence of a significant change in medical condition attributable to the work injury. ~~The bureau shall recalculate the partial disability award, however, if the employee returns, in good faith, to gainful employment unless the employee meets the criteria for reapplying for benefits required under subsection 2 of section 65-05-08.~~ If the employee meets the burden of proving that the employee made a good faith work trial or work search and that the work trial or work search was unsuccessful due to the injury, the bureau shall reevaluate the employee's vocational rehabilitation claim. A good faith work search that does not result in placement is not, in itself, sufficient grounds to prove the work injury caused the inability to acquire gainful employment. The employee shall show that the injury significantly impacts the employee's ability to successfully compete for gainful employment in that the injury leads employers to favor those without limitations over the employee.

6. If, without good cause, the injured employee fails to perform a good faith work trial in a return to the same, modified, or alternative occupation, ~~or in an on-the-job training program, or fails to make a good faith work search in return to work utilizing the employee's transferable skills, the employee is in noncompliance with vocational rehabilitation.~~ A good faith work search that does not result in placement is not, in itself, sufficient grounds to prove the work injury caused the inability to acquire gainful employment. The employee shall show that the injury significantly impacts the employee's ability to successfully compete for gainful employment in that the injury leads employers to favor those without limitations over the employee. ~~If, without good cause, the injured employee fails to attend specific vocational testing, remedial, or other vocational services determined necessary by the bureau or the rehabilitation consultant, the employee is in noncompliance with vocational rehabilitation. If, without good cause, the injured employee fails to attend a scheduled medical or vocational assessment, fails to communicate or cooperate with the vocational consultant, or fails to attend a specific qualified rehabilitation program within ten days from the date the rehabilitation program commences, the employee is in noncompliance with vocational rehabilitation. If, without good cause, the employee discontinues a job the employee is performing, or a training program in which the employee is enrolled, the employee is in noncompliance with vocational rehabilitation. If at any time the~~

employee is noncompliant without good cause, subsequent efforts by the employee to come into compliance with vocational rehabilitation are not considered successful compliance until the employee has successfully returned to the job or training program for a period of ~~sixty~~ thirty days. In all cases of noncompliance by the employee, the bureau, by administrative order, shall discontinue ~~lost-time disability and vocational rehabilitation~~ benefits. If, after issuance of the ~~bureau order becomes final~~, the period of noncompliance continues for ~~sixty~~ thirty days, or a second instance of noncompliance occurs without good cause, the bureau ~~has no further jurisdiction in awarding~~ may not pay any further ~~temporary total disability, temporary partial disability, permanent total disability, or vocational rehabilitation~~ benefits, regardless of whether the employee sustained a significant change in medical condition due to the work injury.

SECTION 4. AMENDMENT. Section 65-05.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

65-05.1-06.1. Rehabilitation award.

1. Within sixty days of ~~receipt of~~ receiving the final vocational consultant's report, the bureau shall issue an administrative order under chapter 28-32 detailing the employee's entitlement to ~~lost-time~~ disability and vocational rehabilitation services.
2. If the appropriate priority option is short-term or long-term training, the vocational rehabilitation award must be within the following terms:
 - a. For the employee's lost time, and in lieu of further ~~temporary total, temporary partial, and permanent total~~ disability benefits, the bureau shall award a rehabilitation allowance. The rehabilitation allowance must be limited to the amount and purpose specified in the award, and must be equal to the disability and dependent benefits the employee was receiving, or was entitled to receive, prior to the award.
 - b. The rehabilitation allowance must include an additional twenty-five percent when it is necessary for the employee to maintain two households, when it is necessary for the employee to maintain two households and the employee elects to commute to and from school on a daily basis rather than maintain a second household and the distance from the employee's residence to the school or training institution is at least thirty miles, or when the employee meets other criteria established by the bureau by rule.
 - c. The rehabilitation allowance must be limited to one hundred four weeks except in cases of catastrophic injury, in which case additional rehabilitation benefits may be awarded in the discretion of the bureau. Catastrophic injury includes:
 - (1) Paraplegia; ~~quadraplegia;~~ quadriplegia; severe closed head injury; total blindness, in both eyes; or amputation of an arm proximal to the wrist or a leg proximal to the ankle, caused by the compensable injury, which renders an employee permanently and totally disabled without further vocational retraining assistance; or

- (2) Those employees the bureau so designates, in its sole discretion, provided that the bureau finds the employee to be permanently and totally disabled without further vocational retraining assistance. There is no appeal from a bureau decision to designate, or fail to designate, an employee as catastrophically injured under this subsection.
- d. The rehabilitation award must include the cost of books, tuition, fees, and equipment, tools, or supplies required by the educational institution. The award may not exceed the cost of attending a public college or university in the state in which the employee resides, provided an equivalent program exists in the public college or university.
- e. ~~The rehabilitation allowance may be paid only during such time as the employee faithfully pursues vocational retraining. The rehabilitation allowance may be suspended during such time as the employee is not faithfully pursuing the training program, or has failed academically. If the work injury itself precludes the employee from continuing training, the employee remains eligible to receive disability benefits.~~
- f. ~~In the event~~ If the employee successfully concludes the rehabilitation program, the bureau may make, in its sole discretion, additional awards for actual relocation expenses to move the household to the locale where the claimant has actually located work.
- ~~g.~~ f. ~~In the event~~ If the employee successfully concludes the rehabilitation program, the bureau may make, in its sole discretion, an additional award, not to exceed two months disability benefit, to assist the employee with work search.
- ~~h.~~ g. If the employee successfully concludes the rehabilitation program, the employee is not eligible for further vocational retraining or total disability benefits unless the employee establishes a significant change in medical condition attributable to the work injury which precludes the employee from performing the work for which the employee was trained, or any other work for which the employee is suited. The bureau may waive this section in cases of catastrophic injury defined by subdivision c of subsection 2.
- ~~i.~~ h. If the employee successfully concludes the rehabilitation program, the employee remains eligible to receive partial disability benefits, as follows:
- (1) Beginning the date at which the employee completes retraining, until the employee acquires and performs substantial gainful employment, the partial disability benefit is sixty-six and two-thirds percent of the difference between the injured employee's average weekly wages before the injury, and the employee's wage-earning capacity after retraining, as measured by the average wage in the employee's occupation, according to criteria established by job service North Dakota in its statewide labor market survey, or such other criteria the bureau, in its sole discretion, deems appropriate. The average weekly wage must be determined on the date the employee

- completes retraining. The benefit continues until the employee acquires substantial gainful employment; ~~but in no case may exceed one year in duration.~~
- (2) Beginning the date at which the employee acquires substantial gainful employment in the field for which the employee was trained, or in a related occupation, the partial disability benefit is ~~sixty-six and two-thirds percent of the difference between the injured employee's average weekly wages before the injury, and the employee's wage-earning capacity after retraining.~~
- ~~(3)~~ Beginning the date at which the employee acquires substantial gainful employment in an occupation unrelated to the employee's training, the partial disability benefit is sixty-six and two-thirds percent of the difference between the injured employee's weekly wages before the injury, and the employee's wage-earning capacity after retraining, as determined under paragraph 1 of this subdivision, or the employee's actual postinjury wage earnings, whichever is higher.
- ~~(4)~~ (3) The partial disability benefit payable under paragraphs 1, and 2, and 3 of this subdivision ~~must be reduced so that the benefit and the employee's earnings or calculated earnings capacity, together, do not exceed one hundred twenty-five percent of the average weekly wage in this state. For purposes of this subsection, the average weekly wage must be determined on the date the employee completes retraining or the date the employee acquires substantial gainful employment. The partial disability benefit so calculated is not subject to increase or decrease when the average weekly wage in this state changes may not exceed the limitation on partial disability benefits contained in section 65-05-10.~~
- ~~(5)~~ (4) The partial disability benefits paid under paragraphs 1, and 2, and 3 may not together exceed one year's duration.
- ~~(6)~~ For purposes of paragraph 1, the date the employee completes retraining is defined as the date the employee is available for full-time work. An employee cannot be deemed available for full-time work while the employee pursues education, unless such pursuit will in no way interfere with full-time work.
- ~~(7)~~ (5) For purposes of paragraphs 1, and 2, and 3, "substantial gainful employment" means full-time bona fide work, for a remuneration, other than make-work. "Full-time work" means employment for twenty-eight or more hours per week, on average.
- ~~(8)~~ (6) The bureau may waive the one-year limit on the duration of partial disability benefits, in cases of catastrophic injury under subdivision c of subsection 2.

3. If the appropriate priority option is return to the same or modified position, or to a related position, the bureau shall determine whether the employee is eligible to receive partial disability benefits pursuant to section 65-05-10. In addition, the bureau, when appropriate, shall make an additional award for actual relocation expenses to move the household to the locale where the claimant has actually located work.
4. If the appropriate priority option is on-the-job training, the bureau shall pay the employee a ~~lost-time~~ disability benefit throughout the duration of the on-the-job training program. Upon completion of the training program, the bureau shall determine whether the employee is eligible to receive partial disability benefits pursuant to section 65-05-10. In addition, the bureau, when appropriate, shall make an additional award for actual relocation expenses to move the household to the locale where the claimant has actually located work.

Approved April 4, 1997

Filed April 4, 1997

CHAPTER 547**SENATE BILL NO. 2383**

(Senators Wogsland, Krebsbach)
(Representatives Berg, Carlson, Glasheim)

**WORKERS' COMPENSATION WEEKLY WAGE
DETERMINATION**

AN ACT to create and enact a new subsection to section 65-07-03 of the North Dakota Century Code, relating to the determination of weekly wage for workers' compensation premium purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁹ **SECTION 1.** A new subsection to section 65-07-03 of the North Dakota Century Code is created and enacted as follows:

Actual wages paid to a clerk, assessor, treasurer, or member of the board of supervisors of an organized township, if the contract for insurance is to provide protection for a person mentioned in this subsection and that person is not employed by the township in any other capacity.

Approved March 21, 1997
Filed March 21, 1997

⁹ Section 65-07-03 was also amended by section 6 of House Bill No. 1269, chapter 527.

VETOED MEASURES

CHAPTER 548

SENATE BILL NO. 2048

(Legislative Council)

(North Dakota/South Dakota Commission)

ND - SD JOINT AUTHORITY EXERCISE

AN ACT to amend and reenact section 54-40-01 of the North Dakota Century Code, relating to the exercise of joint authority by North Dakota and South Dakota.

VETO

March 10, 1997

The Honorable Rosemarie Myrdal
President of the Senate
Senate Chamber
State Capitol
Bismarck, ND 58505

RE: Senate Bill 2048

Dear President Myrdal:

I am returning unsigned and hereby veto Senate Bill 2048.

I fully support the concept of cooperative agreements between North Dakota and South Dakota. Advancing technology and the movement to return responsibility from the federal government to the states are among the reasons this legislation is important. Requiring ratification of such agreements by the full Legislative Assembly, however, could significantly delay implementation of time-sensitive agreements.

For that reason, I am returning this legislation with the suggestion that a mechanism be developed that would shorten the time frame for legislative oversight.

I sincerely appreciate the hard work that has gone into this important legislation. I am anxious, therefore, that a workable alternative be developed that accomplishes our mutual goals for cooperation with our sister state.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ **SECTION 1. AMENDMENT.** Section 54-40-01 of the North Dakota Century Code is amended and reenacted as follows:

54-40-01. Agreement - Exercise of joint powers - Bonds.

1. Two or more governmental units or municipal corporations having in common any portion of their territory or boundary, by agreement entered into through action of their governing bodies, may jointly or cooperatively exercise their respective separate powers, or any power common to the contracting parties or any similar powers, including those which are the same except for the territorial limits within which they may be exercised for the purpose of acquiring, constructing, and maintaining any building for their joint use. The term "governmental unit" as used in this section includes and means every city, county, town, park district, school district, states and United States governments and departments of each thereof, and all other political subdivisions even though not specifically named or referred to herein.
2. Two or more counties or cities, or any combination of counties or cities, whether or not they have in common any portion of their territory or boundary, by agreement entered into through action of their governing bodies, may jointly or cooperatively exercise their respective separate powers, or any power common to the contracting parties or any similar powers, for the purpose of acquiring equipment or constructing roads, bridges, and road and bridge improvements.
3. An agency, department, or institution of this state may enter an agreement with the state of South Dakota to form a bistate authority to jointly exercise any function that the entity is authorized by law to perform. Any agreement entered under this subsection must be submitted to the legislative assembly for approval or rejection at the next regular or special session after the agreement is entered and may not become effective until approved by the legislative assembly.
4. Counties or cities, or any combination of counties or cities, may jointly issue bonds in the same manner and for the purposes provided for in chapter 21-03.

Disapproved March 10, 1997
Filed April 8, 1997

¹ Section 54-40-01 was also amended by section 33 of House Bill No. 1015, chapter 15.

CHAPTER 549

SENATE BILL NO. 2316

(Senators G. Nelson, Mathern)
(Representatives Dorso, Boucher)

SPECIAL SESSION VETO CONSIDERATION

AN ACT to create and enact a new section to chapter 54-03 of the North Dakota Century Code, relating to the convening of a special session of the legislative assembly to consider vetoed legislation; and to declare an emergency.

VETO

March 11, 1997

The Honorable Rosemarie Myrdal
President of the Senate
Senate Chamber
State Capitol
Bismarck, ND 58505

RE: Senate Bill 2316

Dear President Myrdal:

I hereby return Senate Bill 2316, which requires the Governor to call a special session of the Legislative Assembly if he or she vetoes a bill after the Legislature has adjourned. I respectfully veto this bill and ask members of the Assembly to carefully consider several concerns I have regarding this legislation.

First, I am concerned about the constitutional implications of SB 2316. Article V of the North Dakota Constitution, pertaining to the executive branch of government, provides that the Governor may call a special session of the Legislative Assembly. The article provides no legal authority for any other branch of government to prohibit the exercise of that power, to require the exercise of that power, or to condition the exercise of that power. In addition, the Constitution assigns the Governor authority to veto legislation and provides 15 days after adjournment to sign or veto a bill. Again, the Constitution does not provide any means by which that authority can be encumbered, prohibited, or conditioned. SB 2316 would force a governor to call a special session as a condition of exercising the veto. I believe this to be an unconstitutional infringement on the Governor's authority.

Second, I believe SB 2316 may prove impractical. For example, consider the case in which a governor line item vetoes an appropriation of \$78,000 that is part of a larger bill approved in the closing days of a legislative session. Under SB 2316 the Governor would be forced to call a special session to deal with this one issue, a special session that would cost the taxpayers a minimum of \$96,000. Another concern is the timing demands a special session would impose upon legislators. The bill requires the special session to be called within 45 days of adjournment, but does not specify when the special session would be held. This could potentially lead to a situation where the Legislature is still reviewing legislation into the summer.

Finally, I believe sufficient authority already exists under NDCC 54-03-02 to deal with a truly emergency situation. The Legislature can call itself back into session to deal with a delayed veto, so long as the Legislature has not exceeded the 80 day limitation in the Constitution. To date, no Legislature has breached the 80 day deadline in our state's history.

While for the reasons stated I must respectfully veto SB 2316, I do recognize the legitimate concerns members of the Legislative Assembly have with vetoes that occur after the Legislature adjourns. That concern will not go unnoticed. Be assured that I, like governors before me and those who will follow, will exercise the veto power judiciously and with great caution.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-03 of the North Dakota Century Code is created and enacted as follows:

Governor to call special session to consider vetoed legislation. If, after adjournment sine die or adjournment subject to reconvening under section 54-03-02 of the legislative assembly, the governor vetoes any bill passed by the legislative assembly, the governor, within forty-five days of that adjournment, shall call a special session of the legislative assembly for the sole purpose of reconsidering the vetoed legislation.

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

Disapproved March 11, 1997
Filed April 14, 1997

CHAPTER 550

SENATE BILL NO. 2201

(Senators Lee, Watne)

NOTARY PUBLIC BONDS

AN ACT to amend and reenact sections 44-06-03 and 44-06-03.1 of the North Dakota Century Code, relating to bonds of notaries public.

VETO

March 13, 1997

The Honorable Rosemarie Myrdal
President of the Senate
Senate Chamber
State Capitol
Bismarck, ND 58505

RE: Senate Bill 2201

Dear President Myrdal:

I hereby return unsigned and veto Senate Bill 2201, requiring a notary public to purchase a bond from a bonding company and eliminating the option of obtaining a personal surety against a potential claim.

About six percent of notary publics in North Dakota currently use personal sureties. In many instances, particularly in rural areas where bonding companies are not always present and doing business, personal sureties are a practical alternative to a bonding requirement. I am also concerned that if no alternative to a bond exists, the cost of notary bonds may increase.

As I am unaware that the current law has created any problems for North Dakota notaries, I respectfully veto SB 2201.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-06-03 of the North Dakota Century Code is amended and reenacted as follows:

44-06-03. Oath and bond of notary public - Approval of bond. Each notary public, before entering upon the duties of the office, shall take the oath prescribed for civil officers and give to the state a bond in the penal sum of seven thousand five hundred dollars conditioned for the faithful discharge of the duties of the office. ~~Such~~ The bond may ~~must~~ be furnished by a ~~surety~~ or bonding company authorized

to do business in this state ~~or by one or more sureties,~~ and is subject to approval by the secretary of state.

SECTION 2. AMENDMENT. Section 44-06-03.1 of the North Dakota Century Code is amended and reenacted as follows:

44-06-03.1. Notice by surety to secretary of state of claim against bond. If a ~~surety or~~ bonding company giving a bond under section 44-06-03 receives a claim against that bond with respect to a notary public, that ~~surety or~~ bonding company shall notify the secretary of state of the outcome of ~~said~~ the claim.

Disapproved March 13, 1997

Filed April 8, 1997

CHAPTER 551

HOUSE BILL NO. 1110 (Government and Veterans Affairs Committee) (At the request of the State Auditor)

STATE AUDITOR AUDITS

AN ACT to amend and reenact section 54-10-14 of the North Dakota Century Code, relating to audits of public and nonprofit entities by the state auditor.

VETO

March 14, 1997

The Honorable Mike Timm
Speaker of the House
House Chamber
State Capitol
Bismarck, ND 58505

RE: House Bill 1110

Dear Speaker Timm:

I am returning and respectfully veto House Bill 1110. HB 1110 is designed to allow the state auditor to provide audit services to any public or nonprofit entity that receives state or federal financial assistance when such an organization is encountered in the course of an audit of a political subdivision and the governing body of the organization requests services be provided. I have several concerns with this legislation.

First, I believe the bill to be overly broad. By allowing the state auditor to audit ANY nonprofit entity that receives state or federal money, the bill appears to provide authority beyond the scope of the problem the bill was purportedly designed to address. For example, assuming state or federal dollars in some form are involved, a local chamber of commerce or even a statewide organization like the Greater North Dakota Association or North Dakota Farmers Union could contract for audit services with the state auditor.

Second, by permitting the state auditor to compete with the private accounting community, HB 1110 injects government into an area traditionally served by the private sector. None of us wants government to compete with our own businesses unless a compelling public reason exists for government to do so. I do not believe such a reason exists in this instance.

Third, HB 1110 expands state government at a time when we are trying to trim the cost and size of government. Again, unless we can demonstrate that the service provided is somehow essential to the efficient and effective operation of government, I believe we should avoid expanding into this arena.

If the state auditor, in the course of performing the audit of a political subdivision, comes upon a nonprofit entity in need of audit services that are not otherwise cost-effectively available, a mechanism should exist to provide those services, and only those services, when requested. Let us design the mechanism that accomplishes that goal without unduly expanding the authority of the state auditor to audit all nonprofits in the state.

For these reasons, I respectfully veto House Bill 1110.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-10-14 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-10-14. Political subdivisions and other entities - Audits - Fees - Alternative audits and reports. The state auditor shall audit the following political subdivisions once every two years, except as provided in this section or otherwise by law:

1. Counties.
2. Cities.
3. Park districts.
4. School districts.
5. Firemen's relief associations.
6. Airport authorities.
7. Public libraries.
8. Water resource districts.
9. Garrison Diversion Conservancy District.
10. Rural fire protection districts.
11. Special education districts.
12. Area vocational and technology centers.
13. Correction centers.
14. Recreation service districts.
15. Weed boards.
16. Irrigation districts.
17. Rural ambulance service districts.

18. West river water supply district.
19. Southwest water authority.

The state auditor shall charge the political subdivision an amount equal to the fair value of the audit and any other services rendered. Fees for the audit performed by the state auditor must be paid to the state treasurer by the political subdivision audited. The fees must be deposited in the state auditor operating account. Expenses relating to political subdivision audits must be paid from the state auditor operating account, within the limits of legislative appropriation.

The state auditor ~~may~~ in lieu of conducting an audit every two years may require annual reports from school districts with less than one hundred enrolled students, cities with less than three hundred population, and other political subdivisions subject to this section, or otherwise provided by law, with less than one hundred thousand dollars of annual receipts. The reports must contain the financial information required by the state auditor. The state auditor may also make such additional examination or audit as deemed necessary in addition to the annual report. When a report is not filed, the state auditor may charge the political subdivision an amount equal to the fair value of the additional examination or audit and any other services rendered. The state auditor may charge a political subdivision a fee not to exceed fifty dollars an hour for the costs of reviewing the annual report.

A political subdivision ~~may~~, at the option of its governing body, may be audited by a certified public accountant or licensed public accountant rather than by the state auditor. The public accountant shall comply with generally accepted government auditing standards for audits of political subdivisions. The report must be in the form and content required by the state auditor. The number of copies of the audit report requested by the state auditor must be filed with the state auditor when the public accountant delivers the audit report to the political subdivision. The state auditor shall review the audit reports to determine if the reports are in the required form and have the required content, and if the audit meets generally accepted government auditing standards. The state auditor may also periodically review the public accountant's workpapers to determine if the audit meets generally accepted government auditing standards. If the reports are in the required form and have the required content, and the reports and workpapers comply with generally accepted government auditing standards, the state auditor shall accept the audit report. The state auditor may charge the political subdivision a fee of up to fifty dollars an hour, but not to exceed five hundred dollars per review, for the related costs of reviewing the audit report and workpapers.

A political subdivision may not pay a public accountant for an audit until the state auditor has accepted the audit. However, a political subdivision may make progress payments to the public accountant. A political subdivision shall retain twenty percent of any progress payment until the audit report is accepted by the state auditor.

The state auditor may require the correction of any irregularities, objectionable accounting procedures, or illegal actions on the part of the governing board, officers, or employees of the political subdivision disclosed by the audit report or workpapers, and failure to make the corrections ~~shall result~~ results in audits being resumed by the state auditor until the irregularities, objectionable accounting procedures, or illegal actions are corrected.

Any other public or nonprofit entity, whose audit is not otherwise required to be performed under this section or section 54-10-01, which receives state or federal financial assistance, at the option of its governing body, may be audited by the state auditor if the state auditor agrees to perform the audit. The public or nonprofit entity shall pay the state auditor a fee equal to the fair value of the audit, and the fee must be deposited in the state auditor operating account.

The state treasurer shall credit the state auditor operating account with the amount of interest earnings attributable to the deposits in that account.

Disapproved March 14, 1997

Filed March 26, 1997

CHAPTER 552

HOUSE BILL NO. 1147

(Representatives Soukup, Kretschmar, Monson)
(Senators Mathern, Nalewaja, Robinson)

SCHOOL NOTIFICATION OF JUVENILE OFFENSES

AN ACT to create and enact a new section to chapter 15-47 and a new section to chapter 27-20 of the North Dakota Century Code, relating to school personnel notification of juvenile offenses; and to amend and reenact subsection 4 of section 27-20-51 of the North Dakota Century Code, relating to school personnel receipt of juvenile orders of disposition.

VETO

April 3, 1997

The Honorable Mike Timm
Speaker of the House
House Chamber
State Capitol
Bismarck, ND 58505

RE: House Bill 1147

Dear Speaker Timm:

I am returning to you unsigned and hereby veto HB 1147. I have several concerns about the bill and its potential impact on children in our state.

First, the bill is mandatory and requires all law enforcement officials to notify a school administrator about a North Dakota student accused of possessing or using marijuana, accused of activity that would be a felony, or other offenses against North Dakota. Present law allows a school administrator, principal, or guidance counselor to have information if the juvenile was "adjudicated" of an offense that would have been a felony if committed by an adult. But, this bill goes further. It does not require "adjudication," which is a finding of guilt. It requires notification of a petition being filed against a child, which is only the accusation of wrong doing.

Second, this bill undermines the underlying principle of our justice system which is that individuals are presumed innocent until proven guilty by the state. I believe we need to carefully protect this basic principle. In this case, we must balance school safety with the stigma attached to being accused of wrong doing prior to a finding of guilt. This bill allows school officials to distribute information about possible wrong doing to others without such a finding. I believe the bill goes too far.

Third, in 1995 the Legislative Assembly passed tough juvenile laws as part of the Governor's Juvenile Task Force. These laws now require juveniles to be treated as adults for serious felony acts and affords the public information about those charges and dispositions. Therefore, many of the felonies with which a juvenile will be charged will be treated in adult court.

For these reasons, I respectfully veto HB 1147.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-47 of the North Dakota Century Code is created and enacted as follows:

Juvenile offenses - Notification of school officials.

1. A law enforcement officer shall notify a juvenile's principal and school administrator upon filing a petition with the juvenile court alleging that the juvenile committed:
 - a. An offense against a person which would constitute a felony were it committed by an adult;
 - b. An offense involving the use, possession, purchase, or trafficking of marijuana, narcotic drugs, or other controlled substances; or
 - c. An offense involving the use or possession of a dangerous weapon.
2. A juvenile's principal or school administrator may share any information received under this section and section 27-20-51 with the juvenile's teachers if the principal or administrator deems it necessary to ensure the safety or well-being of the juvenile or other persons attending, employed by, or otherwise involved with the juvenile's school or school district. Any information shared under this section or subsection 4 of section 27-20-51 must be treated as confidential information. The superintendent of public instruction shall provide forms and adopt rules under chapter 28-32 for the sharing of information under this section.

² **SECTION 2. AMENDMENT.** Subsection 4 of section 27-20-51 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- ~~4. Following an adjudication of delinquency for an offense that would be a felony if committed by an adult, Unless otherwise ordered by a court, the juvenile court shall forward the order of disposition to the juvenile's school principal, or chief administrative officer, or designated school guidance counselor, if requested, must be allowed access to the disposition order if:~~
 - a. The juvenile court deems it necessary to ensure the safety or well-being of the juvenile or other persons attending, employed by,

² Section 27-20-51 was also amended by section 6 of Senate Bill No. 2153, chapter 124.

or otherwise involved with the juvenile's school or school district;
and

- b. (1) The offense would constitute a felony were it committed by an adult;
- (2) The offense was committed on school property;
- (3) The offense involved a crime against a person;
- (4) The offense was related to the use, possession, purchase, or trafficking of marijuana, narcotic drugs, or other controlled substances;
- (5) The offense involved the use or possession of a dangerous weapon; or
- (6) School attendance is a condition of probation or parole.

SECTION 3. A new section to chapter 27-20 of the North Dakota Century Code is created and enacted as follows:

Notification of school officials. If a juvenile is alleged to have committed an offense specified in subsection 1 of section 1 of this Act, and the court determines the juvenile did not commit the offense, the court shall notify the juvenile's principal and school administrator of that determination.

Disapproved April 3, 1997
Filed April 10, 1997

CHAPTER 553

SENATE BILL NO. 2385

(Senators Wanzek, Solberg, Tomac)
(Representatives Brown, DeKrey, Nichols)

NONPROFIT ORGANIZATION AGRICULTURAL PROPERTY ACQUISITION

AN ACT to amend and reenact subsection 1 of section 10-06.1-10 of the North Dakota Century Code, relating to the acquisition of farmland or ranchland by nonprofit organizations.

VETO

April 3, 1997

The Honorable Rosemarie Myrdal
President of the Senate
Senate Chamber
State Capitol
Bismarck, ND 58505

RE: Senate Bill 2385

Dear President Myrdal:

I respectfully return unsigned and hereby veto SB 2385. This bill prohibits any non-profit corporation from acquiring more than 16,000 acres of land in North Dakota. Today, the law requires all non-profit corporations as well as the US Fish and Wildlife service to receive approval from the governor for all land acquisitions. During the last four years, this acquisition process has worked well. I have approved several purchases including most recently the acquisition of the Davis Ranch by The Nature Conservancy. I have also rejected numerous proposals in the past 4 years. In reviewing these acquisitions, I have carefully weighed numerous concerns, including the economic impact to the local tax base, the long-term economics of removing land from the private sector, access, and the availability of the land for other buyers. I will continue to carefully review them in the future.

The issue that the bill seeks to address is a valid public policy concern. How much land should be owned by non-profit corporations in this state? How does the ownership of such land affect our tax base, the economic vitality of the local area, and the state as whole? These are concerns that I have expressed on numerous occasions, and they are questions we as a state need to answer.

I believe that this issue needs careful consideration and planning for it has far reaching impacts on the environment and economy of our state, particularly our rural areas. As part of our recent discussions on the Garrison project, I have initiated this process. We are in the early stages of discussions with all the interest groups, including the Farm Bureau, Farmers Union, National Wildlife Federation, Water Coalition, and others. We are taking an inventory of public and private ownership, including the number of acres of land owned by non-profit corporations

across North Dakota. One of our main objectives in this process is to develop agreement regarding "how much is enough" for entities such as The Nature Conservancy, North Dakota Wetlands Trust, US Fish & Wildlife and others to own in North Dakota. This effort can be a constructive, positive process that will address the concerns of this bill and accommodate the needs and interests of all, including the proponents of SB 2385.

I support the intent of SB 2385 and have indicated to the sponsors of the bill that the issue is one we need to address. This bill, however, is premature.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 10-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

1. Unless it is permitted to own farmland or ranchland under section 10-06.1-09, the nonprofit organization must have been either incorporated in this state or issued a certificate of authority to do business in this state before January 1, 1985, or, before January 1, 1987, have been incorporated in this state if the nonprofit organization was created or authorized under Public Law No. 99-294 [100 Stat. 418]. A nonprofit organization ~~created or authorized under Public Law No. 99-294 [100 Stat. 418]~~ may acquire no more than twelve sixteen thousand acres [~~4856-228~~ 6400 hectares] of land ~~from interest derived from state, federal, and private sources held in its trust fund in this state.~~

Disapproved April 3, 1997
Filed April 8, 1997

CHAPTER 554

HOUSE BILL NO. 1191

(Representatives Skarphol, Oban, Carlson, Freier)
(Senator Robinson)

ADMINISTRATIVE RULE CALL UP FOR REVIEW

AN ACT to create and enact section 28-32-03.4 of the North Dakota Century Code, relating to authority of the committee on administrative rules to call up existing administrative rules for review; to amend and reenact subsection 1 of section 28-32-03.3 of the North Dakota Century Code, relating to authority of the committee on administrative rules to void or object to administrative rules; and to provide an effective date.

VETO

April 4, 1997

The Honorable Mike Timm
Speaker of the House
House Chamber
State Capitol
Bismarck, ND 58505

RE: House Bill 1191

Dear Speaker Timm:

I respectfully return unsigned and hereby veto HB 1191. This bill expands the authority given in the 1995 session to the Administrative Rules Committee. Currently the Committee may void any part of a rule within ninety days after it is published in the administrative code. HB 1191 expands that authority to any rule upon 30 days notice to the agency which issued the rule. Under HB 1191, the committee may call up a rule regardless of how long it has been in place, and void all or any part of an administrative rule. I am troubled by the bill and its direction.

Administrative rules serve a very important function. They represent the Legislature's delegation of its authority to the agency and serve as the means by which air quality standards are set, water quality is maintained, child support obligations are determined, and a host of other complex issues are managed. Rules are carefully reviewed by the agency, the Attorney General, the Legislative Council, the public, and the Administrative Rules Committee before they become effective. I urge us to be cautious in striking down rules that are developed under the stringent requirements of chapter 28-32 NDCC.

Specifically, these are my concerns.

First, the bill is unnecessary. The Legislature itself, by enacting a law, has the authority to change any administrative rule it chooses. The Legislature rightfully retains that authority. An agency also may change a rule through Chapter 28-32 of the North Dakota Century Code. And the Administrative Rules Committee also has

limited authority to void all or part of a rule within ninety days of the rule being published. But, I do not believe we need to extend that authority beyond the initial ninety days to allow the committee to strike down a rule at any time thereafter.

Second, I have constitutional concerns based upon separation of powers principles. The bill intrudes into essentially an executive branch arena. Our Constitution creates three branches of government that are equal---and does not contemplate one branch being more powerful than another. Power is dispersed by design. In the case of Verry v. Trenbeath, 148 N.W. 2d567 (N.D. 1967) the Supreme Court explained this principle and said,

"..The Legislative branch deliberates upon and decides the policies and principles to be adopted for the future and enacts them into law. The executive branch administers the law so enacted."

Our constitution provides an implied exclusion of each branch from the exercise of the functions of the others, as demonstrated by the Court in the case of City of Carrington v. Foster County, 155 N.W. 2d377 (N.D. 1969).

In that structure, the Legislature as a whole has delegated authority to administrative agencies. But this bill allows that authority to be substituted to a legislative committee. I am concerned that we continue to add more and more responsibilities to legislative committees, interim committees, and legislators themselves as we slowly migrate towards a full-time legislature, which is not consistent with the wishes of the voters, nor the Constitution.

Further, the bill raises serious constitutional questions concerning delegation of legislative authority. Article IV, Section 13 of the Constitution says that, "No law may be enacted except by a bill passed by both houses". HB 1191 appears to run contrary to that provision. The Administrative Rules Committee would have the authority to void any rule or part of a rule, which would change the entire meaning of the rule. So, the practical effect is to give one committee of the Legislative Assembly the authority to substitute its judgment for the judgment of the whole legislature, or that of the agency. As a result, one committee is given authority to make law, rather than both houses of the Legislature.

These constitutional concerns for this process were recognized when the Administrative Rules Committee was given its authority in the 1995 session, as demonstrated by Section 5, Chapter 310 of the 1995 Session Laws, which declares,

"Section 4 of this Act is suspended from operation and becomes effective retroactive to August 1, 1995, upon a ruling by the North Dakota Supreme Court that any portion of subsection 1 of section 28-32-03.3 as created by section 3 of this Act is unconstitutional."

We are continuing to build upon this house of sand in section 4 of the bill, which again recognizes potential constitutional infirmity and declares,

"Section 2 of this Act is suspended from operation, but becomes effective retroactive to August 1, 1997, upon a ruling by the North Dakota Supreme Court that any portion of subsection 1 of section 28-32-03.3 as created by section 3 of chapter 310 of the 1995 Session Laws and amended by section 1 of this Act is unconstitutional."

The bill sets up a complex scheme of legislation which is the result of constitutional concerns, and then prepares for that possibility by suspending operation of part of the bill until the Supreme Court finds another section of the law unconstitutional.

Finally, I am concerned about the practical problems the bill may create. We could cause great mischief if we allow the bill to stand. Consider these examples. Imagine the impact to the investor, in a multi-million dollar facility if he has no confidence in the regulatory climate in which he is expected to do business. Investors in Pro Gold, or Premium Beef want to have stability in the regulations under which they do business. Likewise, our people would not approve of environmental regulations which are administrative rules, being struck down by a legislative committee that has little expertise in highly technical fields such as air quality standards. Furthermore, imagine the chaos we might face if the committee found all child support rules "arbitrary or capricious", and changed the method or manner in which child support obligations were determined. These are but a few examples that I see as being dangerous and the potential ramification of allowing HB 1191 to become law. I signed the bill giving the committee limited authority for this activity in 1995, and did so with some reservation. In this session, I also signed HB 1030 that gives the committee an additional meeting in which to accomplish its work. I hesitate to expand that authority further, and believe it will be a serious mistake to do so.

For these reasons, I have vetoed HB 1191.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³ **SECTION 1. AMENDMENT.** Subsection 1 of section 28-32-03.3 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The legislative council's committee on administrative rules may find that all or any portion of a rule is void if that finding is made within ninety days after the rule is called up for review under section 28-32-03.4, within ninety days after the date of the administrative code supplement in which the rule change appears, or, for rule changes appearing in the administrative code supplement from November first immediately preceding a regular session of the legislative assembly through the following May first, if that finding is made at the first meeting of the administrative rules committee following the regular session of the legislative assembly. The committee on administrative rules may find a rule or portion of a rule void if the committee makes the specific finding that, with regard to that rule or portion of a rule, there is:
 - a. An absence of statutory authority.
 - b. An emergency relating to public health, safety, or welfare.

³ Section 28-32-03.3 was also amended by section 1 of House Bill No. 1030, chapter 279, and section 2 of House Bill No. 1030, chapter 279.

- c. A failure to comply with express legislative intent or to substantially meet the procedural requirements of this chapter for adoption of the rule.
- d. A conflict with state law.
- e. Arbitrariness and capriciousness.
- f. A failure to make a written record of its consideration of written and oral submissions respecting the rule under subsection 3 of section 28-32-02.

SECTION 2. AMENDMENT. Subsection 1 of section 4 of chapter 310 of the 1995 Session Laws is amended and reenacted as follows:

1. The legislative council's committee on administrative rules may find, for any reason under this subsection, that all or any portion of a rule should be reviewed by the legislative assembly, and the committee may suspend the rule or portion of a rule under this subsection if the suspension is made within ninety days after the rule is called up for review under section 28-32-03.4, within ninety days after the date of the administrative code supplement in which the rule change appears, or, for rule changes appearing in the administrative code supplement from November first immediately preceding a regular session of the legislative assembly through the following May first, if that suspension is made at the first meeting of the administrative rules committee following the regular session of the legislative assembly. A rule or a portion of a rule suspended under this subsection becomes permanently ineffective unless it is ratified by both houses of the legislative assembly during the next session of the legislative assembly, in which case it is effective as of the date of ratification by the second house of the legislative assembly. An agency seeking ratification of its rule shall introduce a bill for that purpose. The committee on administrative rules may suspend a rule or portion of a rule if the committee specifically finds that, with regard to the rule, there is:
 - a. An absence of statutory authority.
 - b. An emergency relating to public health, safety, or welfare.
 - c. A failure to comply with express legislative intent or to substantially meet the procedural requirements of this chapter for adoption of the rule.
 - d. A conflict with state law.
 - e. Arbitrariness and capriciousness.
 - f. A failure to make a written record of its consideration of written and oral submissions respecting the rule under subsection 3 of section 28-32-02.

SECTION 3. Section 28-32-03.4 of the North Dakota Century Code is created and enacted as follows:

28-32-03.4. Administrative rules called up for review. The committee on administrative rules may call an administrative rule up for review upon at least thirty days prior notice to the adopting agency of the time the committee will consider the rule. An administrative rule may be called up for review under this section only upon initiation of the question by the committee or the adopting agency on the grounds that the rule is obsolete, archaic, no longer effective, or adopted under statutory law that has been changed and the rule is no longer in harmony with statutory law. The committee shall notify the adopting agency of the reason the rule is called up for review and the adopting agency shall provide a written response to the committee's expressed concerns. A rule called up for review under this section is subject to the authority of the committee on administrative rules under section 28-32-03.3.

SECTION 4. EFFECTIVE DATE. Sections 1 and 3 of this Act are effective for administrative rules called up for review by the committee on administrative rules after July 31, 1997. Section 2 of this Act is suspended from operation, but becomes effective retroactive to August 1, 1997, upon a ruling by the North Dakota supreme court that any portion of subsection 1 of section 28-32-03.3 as created by section 3 of chapter 310 of the 1995 Session Laws and amended by section 1 of this Act is unconstitutional.

Disapproved April 4, 1997
Filed April 10, 1997

CHAPTER 555**HOUSE BILL NO. 1026**

(Appropriations Committee)
(At the request of the Governor)

**WORKERS COMPENSATION BUREAU EQUIPMENT
LINE ITEM**

AN ACT to provide an appropriation for defraying the expenses of the workers compensation bureau and its divisions; to provide authorization to expend funds from the workers' compensation contingency line item; to create and enact a new section to chapter 65-02 of the North Dakota Century Code, relating to a continuing appropriation for allocated loss adjustment expenses; and to amend and reenact section 65-06.1-04 of the North Dakota Century Code, relating to civil air patrol workers' compensation reimbursements.

VETO

April 10, 1997

The Honorable Mike Timm
Speaker of the House
House Chamber
State Capitol
Bismarck, ND 58505

RE: House Bill 1026

Dear Speaker Timm:

I have signed and hereby return to you House Bill 1026. Pursuant to Article V, section 10, of the North Dakota Constitution, however, I hereby veto the appropriation in the amount of \$576,000 for "equipment" contained in section 1 of the bill.

After a careful review of compression problems and wage level concerns at the North Dakota Workers Compensation Bureau, I recommended a 10% increase in salaries and wages at the bureau in my executive budget. HB 1026 contains funding for an additional \$350,000 increase over and above my recommendation. I do not believe this 14% increase, more than double that provided employees in other agencies, can be justified, and I simply cannot support it.

I have maintained consistently during the legislative session that I believe singling out one state agency for preferential treatment is bad public policy. Compensation increases significantly out of line with those in other agencies eventually will place pressure on budgets throughout state government. And while I do not wish to delay the close of the session, neither can I approve a budget that spends more than I believe is necessary. By exercising the line item veto with respect to the \$576,000 included in the bill for equipment, I have restored the total Workers Compensation Bureau appropriation to a level consistent with my executive budget

recommendation. Internal adjustments within these parameters can be made at the bureau for equipment purchases.

I believe the spending increases included in this bill are not consistent with our efforts to control the growing cost of state government and that the taxpayers of North Dakota will not look upon them with favor. For that reason, I respectfully return to you HB 1026.

Sincerely,

Edward T. Schafer
Governor

Disapproved April 10, 1997
Filed April 11, 1997

NOTE: For the full text of House Bill No. 1026, including the vetoed line item, see chapter 26.

CHAPTER 556**HOUSE BILL NO. 1015**

(Appropriations Committee)
(At the request of the Governor)

**INFORMATION SERVICES GENERAL FUND
TRANSFER**

AN ACT to provide an appropriation for defraying the expenses of the various divisions under the supervision of the director of the office of management and budget; to provide an appropriation for defraying the expenses of the department of human services and the state auditor; to provide for various transfers and financial transactions; to provide an exemption from the provisions of section 54-44.1-11 of the North Dakota Century Code; to provide a statement of legislative intent relating to state employee compensation adjustments; to authorize transfer of various special funds to the general fund; to provide for mobile data terminals; to provide directives relating to 911 telephone services; to provide for program reductions if federal programs are terminated or reduced; to provide for a transfer from the North Dakota insurance reserve fund to the office of management and budget; to provide for a transfer from the information services division operating fund to the state general fund; to provide for legislative council studies of public employee health insurance benefits and telemedicine; to provide for a transfer from the budget stabilization fund to the Bank of North Dakota; to provide for transfers from the Bank of North Dakota to the state general fund; to provide for a transfer from the North Dakota mill and elevator association to the state general fund; to amend and reenact sections 26.1-23.1-05, 32-12.2-06, 54-27.2-02, and 54-40-01 of the North Dakota Century Code, relating to government self-insurance pool investments, the state risk management fund, the budget stabilization fund and the exercise of joint authority by North Dakota and South Dakota; to repeal section 5 of Senate Bill No. 2012 as approved by the 1997 legislative assembly, relating to street expenditures; to provide for application; to provide an expiration date; and to declare an emergency.

VETO

April 24, 1997

The Honorable Alvin Jaeger
Secretary of State
600 East Boulevard, 1st Floor
Bismarck, ND 58505-0500

RE: House Bill 1015

Dear Al,

I have signed and hereby return to you House Bill 1015. Pursuant to Article V, section 10, of the North Dakota Constitution, however, I hereby veto section 15 of

the bill, which would transfer \$150,000 from the information services operating fund to the general fund.

After careful review, I believe the proposed transfer conflicts with Federal OMB Circular A-87. Federal rules require that whenever transfers out of internal service funds like that of the Information Services Division (ISD) are made, the federal government must be refunded its share of the transfer. A transfer from the ISD operating fund, which clearly includes federal dollars, would necessitate repayments to the federal government and subject the state to interest and penalty charges. For that reason, I respectfully veto section 15.

In vetoing section 15, I am cognizant of the law as determined by the North Dakota Supreme Court concerning the Governor's line item veto authority in State ex rel. Link v. Olson, 286 NW2d 262 (N.D. 1979). My intention is to fully comply with the law provided by our state's highest court.

Having vetoed section 15, I respectfully file HB 1015 with your office.

Sincerely,

Edward T. Schafer
Governor

Disapproved April 24, 1997
Filed April 24, 1997

NOTE: For the full text of House Bill No. 1015, including section 15, see chapter 15.

MEASURES APPROVED OVER GOVERNOR'S VETO

CHAPTER 557

HOUSE BILL NO. 1137

(Government and Veterans Affairs Committee)

(At the request of the Public Employees Retirement System)

STATE RETIREMENT DATE AND BENEFITS

VETO

March 27, 1997

The Honorable Mike Timm
Speaker of the House
House Chamber
State Capitol
Bismarck, ND 58505

RE: House Bill 1137

Dear Speaker Timm:

I am returning unsigned and hereby veto House Bill 1137.

Sections 2, 3, and 4 of House Bill 1137 provide adjustments in normal and disability retirement benefits and in postretirement and prior service retiree benefits. I believe these adjustments to be appropriate.

Section 1 of the bill, however, provides for a so-called "Rule of 85", permitting an employee to retire when his or her total of years of service credit and years of age equal eighty-five. I do not believe this reduction in our current "Rule of 88" is either necessary or desirable.

State, county, and local government employees work hard and deserve a generous and secure retirement. As we all live longer, however, continuing to lower the threshold age of retirement will at some point result in people receiving pensions for more years than they actually work to generate the benefits. I do not believe this to be appropriate public policy.

My executive budget proposes significant increases in salaries and benefits for state employees. I believe these increases, if adopted by the Legislative Assembly, create a total compensation package sufficient to meet our goal of attracting and retaining a qualified and motivated state government workforce.

I sincerely appreciate the hard work of the members of the North Dakota Public Employees Retirement System Benefits Committee in developing this legislation, and I look forward to working with the Legislative Assembly to develop a mechanism to

effectuate Sections 2, 3, and 4 of the bill. I am convinced, however, that our current "Rule of 88" should remain in place.

For this reason, I respectfully veto House Bill 1137.

Sincerely,

Edward T. Schafer
Governor

NOTE: The Governor's veto of House Bill No. 1137 was not sustained. For the full text of House Bill No. 1137 as approved, see chapter 463.

CHAPTER 558

HOUSE BILL NO. 1440

(Representatives Skarphol, Boucher, Dalrymple)
(Senators Grindberg, Lips, Robinson)

WORKERS COMPENSATION BOARD OF DIRECTORS

VETO

March 27, 1997

The Honorable Mike Timm
Speaker of the House
House Chamber
State Capitol
Bismarck, ND 58505

RE: House Bill 1440

Dear Speaker Timm:

I am returning unsigned and hereby veto House Bill 1440, creating a workers compensation board of directors to manage the workers compensation bureau and oversee the administration of North Dakota's workers compensation program.

Over the past four years, the director and staff of the North Dakota Workers Compensation Bureau, members of the Legislative Assembly, our state's employers and employees, and my staff, all working together, have made great strides in developing and implementing sound policy reforms that have significantly improved the services our workers compensation bureau provides. These reforms have led to better benefits for our workers, lower premiums for our employers, and a dramatic reduction in the bureau's unfunded liability. Last year the voters of North Dakota overwhelmingly ratified our efforts.

House Bill 1440 is aimed at preserving these remarkable results. And while I share the Legislative Assembly's concern for ensuring continued progress at the workers compensation bureau, I believe House Bill 1440 is the wrong vehicle for accomplishing that goal. I, therefore, respectfully veto this bill and ask members of the assembly to carefully consider my reasons for doing so.

First, I believe HB 1440 reduces accountability, an essential element in the operation of any government agency. By removing ultimate authority for management of the workers compensation bureau from the governor and placing it with an unelected board of directors similar to the Board of Higher Education, this legislation seriously weakens the focus of responsibility our workers and our employers demand.

This diffusion of accountability among members of a ten-person board of directors in large measure eliminates our existing "court of last resort" for employers and injured workers who, rightly or wrongly, believe themselves aggrieved by bureau procedures. My office currently manages 30 or more calls per month from individuals seeking the assistance they believe the governor can provide. To whom will these people turn for help in the future?

In addition, HB 1440 erodes traditional legislative and executive oversight of the bureau's budget. Section 5 of the bill permits the bureau, with the board's acquiescence, to transfer moneys between line items within the bureau's budget. The budget itself is developed without coordination with the governor's overall budget. This lack of coordination concerning salary levels, benefit packages, and technology programs can contribute to serious budgetary pressures being placed, not only on the premium payors who ultimately fund the bureau's budget, but also on other agencies who must compete with the workers compensation bureau for employees. All these pressures can lead to the prospect of increased taxes.

Be assured that I am as concerned as any of you that the progress we have made in our workers compensation program never be compromised. But, with the appropriate protections afforded by the independent audit created in Senate Bill 2074 already in place, I am unwilling, and I believe the people of North Dakota are unwilling, to sacrifice the accountability required of every government agency and its administration.

I, therefore, respectfully veto House Bill 1440.

Sincerely,

Edward T. Schafer
Governor

NOTE: The Governor's veto of House Bill No. 1440 was not sustained. For the full text of House Bill No. 1440 as approved, see chapter 528.

INITIATED MEASURES APPROVED

CHAPTER 559

HAZARDOUS WASTE FACILITIES

An initiated measure to create a new section to chapter 23-29 of the North Dakota Century Code related to an environmental protection act.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

23-29-16. Environmental Protection Act.

1. No private hazardous waste facilities. No hazardous waste disposal facility may be constructed, owned or operated in the state of North Dakota except by an appropriate governmental entity.
2. Insurance required. No private person or business entity may own and/or operate (1) an industrial waste landfill disposal facility or (2) a municipal waste landfill disposal facility in this state without a valid policy of liability insurance in effect in order to respond in damages for liability arising out of the ownership, maintenance or use of that facility. The policy of insurance must provide coverage for all damage caused to the environment, corrective and/or remedial action in connection therewith, and any other damage caused to public or private property resulting from the ownership, maintenance or use of the facility. The policy limits of the insurance policy shall not be less than the total amount computed by multiplying fifty dollars per ton times the number of tons of solid waste accepted at the facility from and after January 1, 1995. The insurance policy required by this section shall be maintained for one hundred years after the closure of the facility. A copy of the policy must be filed with the North Dakota health department.
3. Officer and director liability. Each officer and director of any company which (1) owns and/or operates a solid waste landfill disposal facility in North Dakota or (2) controls such a company as defined in subsection 1 of section 23-29-07 shall be personally jointly and severally strictly liable for all damages caused by the solid waste to the environment, including any remedial or corrective action required therewith, and for any other damage resulting to public or private interests. Each such person shall have the right to seek contribution from any person or entity likewise liable for such damage.
4. Vote required. Upon receiving (1) an application to renew the permit for (a) a privately owned industrial waste landfill disposal facility or (b) a privately owned municipal waste disposal facility or (2) a request for a permit modification seeking to increase the acreage of any such facility, the health department shall notify the board of county commissioners of the county in which the facility is located of the department's intention to renew or modify the permit for the facility. The board of county commissioners shall then place the issue on the ballot at the next regularly scheduled election after receiving notice from the department to allow the qualified electors of the county to vote to approve or

disapprove the renewal or modification based on public interest and impact on the environment. If a majority of the qualified electors voting in the election vote to disapprove the permit renewal or modification, the department may not renew or modify the permit. The facility may continue to operate under its existing permit until the election has been held.

5. Exceptions. The requirements imposed by this section do not apply to inert waste, waste resulting from the processing of agricultural products, oil field exploration and production waste or solid waste disposed of on site at energy conversion facilities and coal mining operations.
6. Statute of limitations. There shall be no statute of limitations applicable to the provisions of this section. An action for damages by the state, other appropriate governmental entity or private party may be commenced at any time.
7. Severability. If any portion of this section is found to be invalid, the remaining portions shall remain in full force and effect.

Approved June 11, 1996

55,322 to 55,165

NOTE: This was measure No. 6 on the primary election ballot.

CHAPTER 560

VETERANS' POSTWAR TRUST FUND

An initiated measure to create and enact a new section to article X of the Constitution of North Dakota, relating to establishing the veterans' postwar trust fund as a permanent trust fund.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to article X of the Constitution of the state of North Dakota is created and enacted as follows:

The veterans' postwar trust fund shall be a permanent trust fund of the state of North Dakota and shall consist of moneys transferred or credited to the fund as authorized by legislative enactment. Investment of the fund shall be the responsibility of the state treasurer who shall have full authority to invest the fund only in the same manner as the state investment board is authorized to make investments. All income received from investments is to be utilized for programs which must be of benefit and service to veterans, who are defined by legislative enactment, or their dependents, and such income is hereby appropriated to the administrative committee on veterans' affairs on a continuing basis for expenditure upon those programs selected at the discretion of the administrative committee on veterans' affairs.

Approved November 5, 1996

185,361 to 57,478

NOTE: This was measure No. 4 on the general election ballot.

INITIATED MEASURES DISAPPROVED

CHAPTER 561

LOTTERIES

An initiated measure to amend section 25 of article XI of the Constitution of North Dakota, relating to the conduct of a lottery.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

AMENDMENT. Section 25 of article XI of the Constitution of North Dakota is amended and reenacted as follows:

Section 25. ~~The~~ Except as authorized by this section, the legislative assembly shall not authorize any game of chance, lottery, or gift enterprises, under any pretense, or for any purpose whatever. However, the legislative assembly may authorize by law bona fide nonprofit veterans', charitable, educational, religious, or fraternal organizations, public safety organizations, civic and service clubs, or such other public-spirited organizations as it may recognize, to conduct games of chance when the entire net proceeds of such games of chance are to be devoted to educational, charitable, patriotic, fraternal, religious, or other public-spirited uses. Except for a state conducted lottery, a lottery must be conducted by either a licensed establishment or an organization operating a bingo site. "Licensed establishment" means any restaurant, bar, lounge, or lodging establishment owned or managed by a person licensed to sell alcoholic beverages for consumption upon the premises where the premises have been licensed for the two immediately preceding years in the state. A lottery must be conducted in accordance with subsections 1, 2, 3, 4, and 5 of this section.

1. A licensed establishment or an organization operating a bingo site shall distribute all adjusted gross revenue from the lottery, less the amount allocated for prizes as follows:
 - a. Twenty-five percent to be retained by the licensed establishment or the organization operating a bingo site.
 - b. Twenty-five percent to be paid to the vendor. "Vendor" means a distributor of amusement devices and associated equipment, a bona fide nonprofit veterans', charitable, educational, religious, or fraternal organization, public safety organization, civic or service club, or other public-spirited organization, a licensed establishment or a liquor or beer wholesaler. A vendor or its predecessors must have been licensed for the two immediately preceding years in the state.
 - c. Twenty-five percent to the bona fide nonprofit veterans, charitable, educational, religious, or fraternal organization, public safety organization, civic or service club, or other public-spirited organization which owns the premises or has a lease agreement with an organization operating a bingo site or a licensed establishment for gaming.

- d. Twenty-five percent to the state treasury.
 - e. Except for the same income tax as paid by similar persons in the state not conducting games of chance, the twenty-five percent to the state treasury is in lieu of all other state or local taxation or fees from all persons except manufacturers that would otherwise be based on the lottery.
2. "Lottery" means a game that offers preprinted tickets authorized by the attorney general that indicate immediately or in a grand prize drawing whether the player has won a prize or any electrical mechanical device that, upon insertion of currency is available to play or operate any game of chance allowable within the boundaries of the state of North Dakota including but not limited to Indian reservations. Twenty-five lottery devices may be operated per authorized site at one time.
3. The attorney general shall regulate and license lottery manufacturers and vendors and may adopt rules under the state Administrative Agencies Practice Act, as may be amended from time to time, to control the operation of a lottery. All contracts by manufacturers, manufacturers' distributors and distributors regarding lotteries prior to the enactment of this article are null and void.
4. The state legislature may adopt statutes, as may be amended from time to time, to control the operation of a lottery.
5.
 - a. No person under the age of twenty-one years may participate in a lottery.
 - b. If a person under the age of twenty-one years is permitted at an authorized site, the area reserved for a lottery must be separated from the other areas of the premises pursuant to rules the attorney general may adopt under the state Administrative Agencies Practice Act as may be amended from time to time.

Disapproved June 11, 1996

36,074 to 80,122

NOTE: This was measure No. 5 on the primary election ballot.

CHAPTER 562

WORKERS' COMPENSATION LAWS

An initiated measure for the creation of five new sections to title 65 of the North Dakota Century Code, for the amendment of section 65-01-01; subsections 4, 9, and 18 of section 65-01-02; subsection 7 of section 65-01-14; sections 65-02-08; 65-02-08.1; 65-02-15; 65-02-22; 65-02-23; 65-05-04; 65-05-07; and 65-05-09.3; subsection 7 of section 65-05-10; sections 65-05-28; 65-05-35; 65-05.1-01; 65-05.1-04; subsection 1 of section 65-05.1-06.1; sections 65-10-01; and 65-10-03 of the North Dakota Century Code and section 1 of 1995 Senate Bill No. 2377, and for the repeal of sections 65-01-15; 65-02-19; 65-02-20; 65-05-01.2; 65-05-01.3; 65-05-01.4; 65-05-01.5; 65-05-12.2; and subsection 5 of section 65-05-28 of the North Dakota Century Code, relating to the presumed retirement of injured employees, payment of attorney's fees only to prevailing injured employees, vocational rehabilitation of injured employees, permanent impairment, choice of health care provider, judicial review and jurisdiction, and the administration of the workers compensation bureau.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-01-01 of the North Dakota Century Code is amended and reenacted as follows:

65-01-01. Purposes of compensation law - Police power. The state of North Dakota, exercising its police and sovereign powers, declares that the prosperity of the state depends in a large measure upon the well-being of its wage workers, and, hence, for workers injured in hazardous employments, and for their families and dependents, reasonable, sure and certain relief is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding, or compensation, except as otherwise provided in this title, and to that end, all civil actions and civil claims for relief for those personal injuries and all jurisdiction of the courts of the state over those causes are abolished except as is otherwise provided in this title. ~~A civil action or civil claim arising under this title which is subject to judicial review, must be reviewed solely on the merits of the action or claim. This title may not be construed liberally on behalf of any party to the action or claim.~~

SECTION 2. AMENDMENT. Subsections 4, 9, and 18 of section 65-01-02 of the North Dakota Century Code are amended and reenacted as follows:

4. "Average weekly wage" means the average weekly wages the employee was receiving from all employments at the time of injury. The average weekly wage as determined under this section must be rounded to the nearest dollar. In cases where the employee's wages are not fixed by the week, they must be determined by using the first applicable formula from the schedule below:
 - a. The "average weekly wage" of a self-employed employee is determined by the following formula: net profits based on preceding tax year or preceding fifty-two weeks whichever is higher, plus depreciation, meal and travel expenses, and any expenses chargeable to use of personal residence as allowed under the federal tax laws.

- b. Hourly or daily rate multiplied by number of hours or days worked per seven-day week.
 - c. Monthly rate multiplied by twelve months and divided by fifty-two weeks.
 - d. Biweekly rate divided by two.
 - e. ~~In seasonal employment, the average weekly wage is one fiftieth of the total wages the employee has earned from all occupations during the twelve calendar months immediately preceding the injury or one fiftieth of the average annual income for the three year period immediately preceding the injury, whichever is greater.~~
 - f. If the average weekly wage of an employee cannot be ascertained, the wage for the purposes of calculating compensation is the usual wage paid other employees engaged in similar occupations where the wages are fixed.
 - ~~g.~~ f. If there are special circumstances under which the average weekly wage cannot be reasonably and fairly determined by applying subdivisions a through ~~f~~ e, an average weekly wage may be computed by dividing the aggregate wages during the twelve months prior to the injury by fifty-two weeks, or the number of weeks actually worked if that number is less than fifty-two.
9. "Compensable injury" means an injury by accident arising out of and in the course of employment ~~which must be established by medical evidence supported by objective medical findings.~~
- a. The term "compensable injury", in addition to an injury by accident, includes:
 - (1) Any disease which can be fairly traceable to the employment. Ordinary diseases of life to which the general public outside of the employment is exposed are not compensable except where the disease follows as an incident to, and in its inception is caused by a hazard to which an employee is subjected in the course of employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. The disease includes impairment and effects from radiation fairly traceable to the employment. It does not have to be foreseen or expected, but after it is contracted, it must have had its origin in a risk connected with the employment and have flowed from that source as a rational consequence. Preventive treatment for communicable diseases is not compensable under this title.
 - (2) In injury to artificial members.
 - (3) Injuries due to heart attack or other heart-related disease, stroke, and mental or physical injury precipitated by mental stimulus, which must be causally related to the employee's employment, with reasonable medical certainty, and which must have been precipitated by unusual stress.

- (4) Injuries arising out of employer-required or supplied travel to and from a remote jobsite or activities performed at the direction or under the control of the employer.
 - (5) An injury caused by the willful act of a third person directed against an employee because of the employee's employment.
- b. The term does not include:
- (1) A willfully self-inflicted injury, an injury caused by the employee's willful intention to commit suicide or to injure or kill another, including injury or aggravation of an injury, which results from the employee's suicide or attempted suicide.
 - (2) Any injury caused by the use of intoxicants or the illegal use of controlled substances.
 - (3) An injury that arises out of an altercation in which the injured employee is the initial physical aggressor.
 - (4) An injury that arises out of an illegal act committed by the injured employee.
 - (5) An injury that arises out of an employee's voluntary nonpaid participation in any recreational activity, including athletic events, parties, and picnics, even though the employer pays some or all the cost of the activity.
 - (6) Injuries attributable to a preexisting injury, disease, or condition which clearly manifested itself prior to the compensable injury. This does not prevent compensation where employment substantially aggravates and acts upon an underlying condition, substantially worsening its severity, or where employment substantially accelerates the progression of an underlying condition. It is insufficient, however, to afford compensation under this title solely because the employment acted as a trigger to produce symptoms in a latent and underlying condition if the underlying condition would likely have progressed similarly in the absence of the employment trigger, unless the employment trigger is determined to be a substantial aggravating or accelerating factor. An underlying condition is a preexisting injury, disease, or infirmity.
 - (7) A nonemployment injury that, although acting upon a prior compensable injury, is established as an independent intervening cause of injury.
 - (8) A latent or asymptomatic degenerative condition, caused in substantial part by employment duties, which is triggered or made active by a nonemployment injury.
 - (9) A mental or emotional injury arising principally out of a bona fide personnel action, including a transfer, promotion, demotion, or termination except an action that is the intentional infliction of emotional harm.

18. "Fairly traceable to the employment" when used to modify the term "disease" means only a disease which:
- a. Arises under conditions wherein it is apparent to the rational mind upon consideration of all the circumstances that there is a direct causal connection between the conditions under which the work is performed and the disease;
 - b. Can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;
 - c. Can be fairly traced to the employment; ~~or~~
 - d. However, any condition or impairment of health of a full-time paid firefighter or law enforcement officer caused by lung or respiratory disease, hypertension, heart disease, or exposure to infectious disease as defined by sections 23-07.3-01 and 23-07.3-02, or occupational cancer in a full-time paid firefighter, resulting in total or partial disability or death is presumed to have been suffered in the line of duty. The condition or impairment of health may not be attributed to any disease existing before that total or partial disability or death unless the contrary is shown by competent evidence. As used in this subdivision, an occupational cancer is one which arises out of employment as a full-time paid firefighter and is due to injury due to exposure to smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty as a full-time paid firefighter. A full-time paid firefighter or law enforcement officer is not eligible for the benefit provided under this subdivision unless that full-time paid firefighter or law enforcement officer has completed ~~five~~ two years of continuous service and has successfully passed a physical examination which fails to reveal any evidence of such a condition. ~~An employer shall require a physical examination upon employment, and annually thereafter, for any employee subject to this subdivision. Results of the examination must be used in rebuttal to a presumption afforded under this subdivision. For purposes of this subdivision, "law enforcement officer" means a person who is licensed to perform peace officer law enforcement duties under chapter 12-63 and is employed full-time by the bureau of criminal investigation, the game and fish department, the state highway patrol, the parole and probation division, the North Dakota state university police department, the North Dakota state college of science police department, the university of North Dakota police department, a county sheriff's department, or a city police department. The presumption does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed for ten years or less, if the condition or impairment is diagnosed more than two years after the employment as a full-time paid firefighter or law enforcement officer ends. The presumption also does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed more than ten years, if the condition or impairment is diagnosed more than five years after the employment as a full-time paid firefighter or law enforcement officer ends.~~

SECTION 3. AMENDMENT. Subsection 7 of section 65-01-14 of the North Dakota Century Code is amended and reenacted as follows:

7. The bureau shall issue an administrative order under chapter 28-32 when it makes a permanent partial impairment award, vocational award, ~~or~~ when it terminates or denies disability or vocational services or has otherwise been requested to issue an administrative order by an aggrieved party by filing a request for reconsideration of an informal decision or has been requested to issue an administrative order following a constructive reduction or denial of benefits. The bureau shall issue an informal decision on an initial determination of disability benefits.

SECTION 4. AMENDMENT. Section 65-02-08 of the North Dakota Century Code is amended and reenacted as follows:

65-02-08. Rulemaking power of the bureau - Fees prescribed by the bureau.

The bureau shall adopt rules necessary to carry out this title. The bureau may not charge a fee for providing copies of claim files to an injured employee or employer or their attorney. All fees on claims for legal, medical, and hospital services rendered under this title to an injured employee must be in accordance with schedules of fees adopted by the bureau. Fee schedules for medical and hospital services must incorporate cost-saving measures and must be submitted to and approved by the committee on administrative rules before submission to the legislative council for publication. The bureau shall establish, by administrative rule, a reasonable maximum hourly rate ~~and a maximum fee~~ to compensate an injured employee's attorney for legal services following constructive denial of a claim, notice of informal decision, or issuance of an administrative order under chapter 28-32 reducing or denying benefits. ~~The bureau shall~~ "Constructive denial" means failure to issue an administrative order within sixty days of the date when the elements of initial filing or notice or reapplication of claim have been satisfied or a claim for additional benefits over and above benefits previously awarded has been made. Satisfaction of elements of filing must be defined by administrative rule. The bureau shall pay an injured employee's attorney's fees and costs from the bureau general fund. ~~Except for an initial determination of compensability, an attorney's fee may not exceed twenty percent of the amount awarded, subject to a maximum fee set by administrative rule.~~ The bureau shall pay an attorney's fees when:

1. The employee has prevailed through settlement or otherwise in binding dispute resolution under section 65-02-20; ~~or~~
2. The employee has prevailed through settlement or otherwise after reconsideration of an informal decision under section 65-01-04;
3. The employee has prevailed through settlement or otherwise after an administrative hearing under chapter 28-32; or
4. If there has been constructive denial of a claim, the bureau shall only pay attorney's fees from the occurrence of the constructive denial until the bureau issues a notice of informal decision or administrative order.

This section does not prevent an injured employee or an employer from hiring or paying an attorney; however, the employee's attorney may not seek or obtain costs or attorney's fees from both the bureau and the employee relative to the same services. Nothing herein shall prevent an injured employee from paying attorney's fees for services to the extent that such services are not fully compensated by the bureau. The bureau shall be liable for payment of interest on legal, medical, and

hospital services in the manner provided for by sections 13-01.1-01 through 13-01.1-06. All disputes relating to payment or denial of an attorney's fee must be submitted to the hearing officer or arbitrator for decision. An attorney lien filed with the bureau must be accompanied by a written fee agreement between an injured employee and the attorney seeking enforcement of the lien.

SECTION 5. AMENDMENT. Section 65-02-08.1 of the North Dakota Century Code is amended and reenacted as follows:

65-02-08.1. State advisory council - Composition - Compensation - Duties.

~~The bureau shall appoint a state advisory council composed of an equal number of employer representatives and employee representatives who may be regarded fairly as representative because of their vocation, employment, or affiliations, and members representing the general public as the bureau may designate consisting of eleven members selected as follows: two persons from a list of four submitted by the American federation of labor and congress of industrial organizations, one person from a list of two submitted by the international brotherhood of teamsters, one person from a list of two submitted by the North Dakota trial lawyers association, one person from a list of two submitted by the state medical association, one person from a list of two submitted by the state chiropractic association, one person from a list of two submitted by the workers against inhumane treatment, two persons from a list of four submitted by the greater North Dakota association, one person from a list of two submitted by the North Dakota retail association, and one person from a list of two submitted by the associated general contractors of North Dakota. The council shall aid the bureau in formulating policies, discussing problems related to the administration of the bureau, and in assuring impartiality and freedom from political influence in the solution of these problems. The members of the council may be reimbursed for expenses in the amounts provided by law for state officials but must serve without further compensation except as may be authorized and fixed by the bureau by rule. The bureau shall provide staff services to the council. The council shall assist the bureau in formulating policies and discussing problems related to the administration of the bureau, including adoption of rules, establishment of fees, determination of employer premium rates, maintenance of the solvency of the workers compensation fund, and provision of rehabilitation services. The council may make recommendations and proposals for consideration by the bureau.~~

SECTION 6. AMENDMENT. Section 65-02-15 of the North Dakota Century Code is amended and reenacted as follows:

~~**65-02-15. Workers' compensation binding arbitration.** A dispute between the bureau and an injured employee must be resolved by arbitration when the dispute concerns an amount no greater than three thousand dollars. The bureau shall adopt rules to establish how the amount of the dispute is determined. Within thirty days following issuance of an administrative order under chapter 28-32 reducing or denying benefits, an aggrieved employee or employer may request that the action be submitted to binding arbitration in lieu of a formal administrative hearing or judicial remedy. Binding arbitration is permitted only with the consent of the nonrequesting party. The employee can request and the bureau shall allow a change of arbitrator upon a showing of just cause. The bureau may hire arbitrators based upon criteria the bureau determines relevant, including education, training, and experience. The bureau shall pay an injured employee's attorney's fee only when the employee prevails. The bureau shall adopt rules to establish a maximum fee for an injured employee's attorney. An attorney's fee may not exceed twenty percent of the amount awarded. Payment of a disputed amount pursuant to an arbitration award does not establish the bureau's liability for any issue not raised during the arbitration~~

~~proceeding and does not establish the bureau's liability for any underlying condition. The arbitration process may not be used for initial determinations of compensability. The bureau retains continuing jurisdiction over the arbitration proceeding under section 65-05-04. An arbitration decision that is not revoked or modified by the bureau under section 65-05-04 is final and not reviewable by any court or subject to modification by the bureau pursuant to the bureau's continuing jurisdiction.~~

SECTION 7. AMENDMENT. Section 65-02-22 of the North Dakota Century Code is amended and reenacted as follows:

65-02-22. Hearing officer - Qualifications - Location. ~~A hearing officer designated by the bureau under chapter 28-32 must be a person licensed to practice law in this state. A hearing officer designated by the bureau may not maintain an office within the bureau from which the hearing officer conducts daily business. This section does not preclude a hearing held pursuant to chapter 28-32 from being held within the bureau. All hearings of the bureau, except investigatory hearings under section 28-32-08 and rulemaking hearings held in accordance with section 28-32-02, must be conducted by the office of administrative hearings in accordance with the administrative hearings provisions of chapter 28-32 and any rules adopted pursuant to chapter 28-32. Orders issued by the presiding administrative law judge shall be final orders pursuant to section 28-23-13.~~

SECTION 8. AMENDMENT. Section 65-02-23 of the North Dakota Century Code is amended and reenacted as follows:

65-02-23. Workers' compensation fraud unit. The bureau shall establish a workers' compensation fraud unit. The bureau may employ investigators and licensed attorneys, or contract with a private investigator whenever feasible or cost effective, to investigate and review any alleged case of willful and material misrepresentation of payroll to the bureau by an employer as described under section 65-04-14 and to investigate and review any alleged case of willful and material filing of a false claim or false statement in relation to a claim as defined under section 65-05-33. The unit shall refer a case of willful and material misrepresentation of payroll to the bureau or of willful and material filing of a false claim or false statement for prosecution by the state's attorney in the county of the employee's residence. The administrative and civil penalties provided in section 65-05-33 may be imposed only after criminal conviction pursuant to that section.

SECTION 9. AMENDMENT. Section 1 of 1995 Senate Bill No. 2377 is amended and reenacted as follows:

Workers' adviser program. A workers' adviser program is established. The program is independent of the claims department of the workers compensation bureau and activities administered through the program must be administered in accordance with this title. The program must provide assistance to an injured employee, including acting on behalf of an injured employee who is aggrieved by a decision of the bureau, communicating with bureau staff regarding claim dispute resolution, and advising an injured employee of the effect of decisions made by the bureau, the employee, or an employer under this title. The bureau shall employ a director of the program, support staff for the program, and other personnel determined to be necessary for the administration of the program. Personnel employed to administer the program may not act as an attorney for an injured employee. ~~The bureau may not pay attorney fees to an attorney who represents an injured employee in a disputed claim before the bureau unless the injured employee has first attempted to resolve the dispute through the workers' adviser program. An injured employee who contacts the program for assistance within the appeal period~~

after an administrative order has been issued or a benefit has been constructively reduced or denied is deemed to have satisfied the requirement of requesting an administrative hearing or an arbitration hearing on that order or constructive reduction or denial. ~~The information contained in a file established by the workers' adviser program on an injured employee's disputed claim is not subject to discovery and may not be used as evidence in subsequent proceedings relative to that dispute.~~

SECTION 10. AMENDMENT. Section 65-05-04 of the North Dakota Century Code is amended and reenacted as follows:

65-05-04. Bureau has continuing jurisdiction over claims properly filed. If the original claim for compensation has been made within the time specified in section 65-05-01, the bureau at any time, on its own motion or on application, may review the award, and in accordance with the facts found on such review, may end, diminish, or increase the compensation previously awarded, or, if compensation has been refused or discontinued, may award compensation. ~~There is no appeal from a bureau decision not to reopen a claim after the bureau's order on the claim has become final.~~ A bureau decision not to reopen a claim may be appealed to the district court. The district court shall direct the bureau to reopen a claim if the injured worker demonstrates by preponderance of the evidence that there is new evidence and there were reasonable grounds for the failure to offer the evidence prior to the bureau's decision affecting benefits.

SECTION 11. A new section to chapter 65-04 of the North Dakota Century Code is created and enacted as follows:

Premium information rate classification - Duty to disclose. Notwithstanding the provisions of 65-04-14, the bureau shall publish on the first business day of each year the identity of each employer currently in arrears in premium payments required under section 65-04-04 and the amount of such arrearages.

SECTION 12. AMENDMENT. Section 65-05-07 of the North Dakota Century Code is amended and reenacted as follows:

65-05-07. Injured employee given medical and hospital service required - Furnished artificial limbs and appliances for rehabilitation - Fee approval. Immediately after an injury sustained by an employee and during the resulting period of disability, the fund shall furnish to the employee such reasonable and appropriate medical, surgical, and hospital service and supplies as the nature of the injury may require. The bureau shall apply the same standards of reasonableness and appropriateness to both palliative and curative services and supplies. The fund may furnish such artificial members and replacements as in the judgment of the bureau may be necessary to rehabilitate such injured employee.

1. The health care provider or physician must be acting within the scope of the provider's or physician's license or fees will be denied.
2. Fees may not be approved for more than one health care provider or physician, or both, in a case where treatment is provided over the same period of time except for the service of a consulting physician, assistant surgeon, or anesthetist or in an emergency.
3. The bureau, in cooperation with professional organizations of doctors and health care providers, shall establish a system of peer review to determine reasonableness of fees and payment denials for unjustified treatments, hospitalization, or visits. The doctor or health care

provider, injured employee, or employer shall have the right to appeal adverse decisions of the bureau in accordance with the ~~medical aid rules adopted by the bureau~~ provisions of chapter 28-32.

4. Health care providers or doctors may not bill injured workers for any services rendered as a result of the compensable work injury. If a court in any jurisdiction finds an injured employee liable for medical, surgical, or hospital services or supplies occasioned by a compensable work injury, the bureau shall hold the injured employee harmless from any such liability.
5. If the bureau determines that it is necessary to provide permanent additions, remodeling, or adaptations to real estate to those workers who sustain catastrophic injury as defined in chapter 65-05.1, such improvements may be made, but may not exceed ten thousand dollars for the life of the claimant, regardless of any subsequent claim.
6. If a doctor or health care provider who has treated or provided services to an injured employee fails or refuses without just cause to file with the bureau a report required by section 65-05-02, 65-05-08, or 65-05-08.1, within thirty days of examination, treatment, or provision of other services rendered in connection with a compensable work injury, or within thirty days of a request for such report made by the claimant, the claimant's representative, or the bureau, the bureau shall assess as a penalty a sum of one hundred dollars. Health care providers or doctors may not bill injured workers for any penalty assessed by the bureau as a result of failure or refusal without just cause to file a required report.
7. The filing of an accident report or the rendering of treatment to an injured worker who comes under the bureau's jurisdiction, as the case may be, constitutes acceptance of the bureau's medical aid rules and compliance with its rules and fees.

SECTION 13. AMENDMENT. Section 65-05-09.3 of the North Dakota Century Code is amended and reenacted as follows:

65-05-09.3. Retirement presumption - ~~Termination of benefits upon retirement.~~

4. An employee who has retired or voluntarily withdrawn from the labor force ~~and who is not eligible to receive temporary total disability, temporary partial disability, or permanent total disability benefits, or a rehabilitation allowance from the bureau~~ is presumed retired from the labor market and is ineligible for receipt of disability benefits under this title. The presumption may be rebutted by a preponderance of the evidence; ~~however, the subjective statement of an employee that the employee is not retired is not sufficient in itself to rebut objective evidence of retirement that the worker:~~
 1. Is actively seeking employment;
 2. Is available for gainful employment;
 3. Has not rejected any job offer made by a former employer, or other bona fide offer by another employer; and

4. Has not provided the employer, upon written request, with written notice of a scheduled retirement date.

The presumption does not apply to any employee who is permanently and totally disabled as defined under this title.

2. ~~An injured employee who is receiving permanent total, temporary total, or temporary partial disability benefits, or rehabilitation benefits, and who begins receiving social security retirement benefits or other retirement benefits in lieu of social security retirement benefits, or who is at least sixty five years old and is eligible to receive social security retirement benefits or other retirement benefits in lieu of social security retirement benefits, is considered to be retired. The bureau may not pay any permanent total, temporary total, or temporary partial disability benefits, rehabilitation benefits, or supplemental benefits to an employee who is considered retired, however, the bureau is liable for payment of medical benefits and permanent partial impairment benefits. An employee who is determined to be catastrophically injured as defined by subdivision e of subsection 2 of section 65-05.1-06.1 is not subject to this section.~~
3. ~~The bureau retains liability for disability benefits, permanent partial impairment benefits, and medical benefits for an injured employee who is eligible to receive social security retirement benefits or other retirement benefits in lieu of social security, who is gainfully employed, and who suffers an injury arising out of and in the course of that employment.~~
4. ~~This section applies to all persons who retire or become eligible for social security retirement benefits or other retirement benefits in lieu of social security retirement benefits after July 31, 1995.~~

SECTION 14. AMENDMENT. Subsection 7 of section 65-05-10 of the North Dakota Century Code is amended and reenacted as follows:

7. ~~Benefits must be paid during the continuance of partial disability; not to exceed a period of five years. The bureau may waive the five year limit on the duration of partial disability benefits in cases of catastrophic injury as defined in section 65-05.1-06.1. This subsection is effective for partial loss of earnings capacity occurring after June 30, 1994.~~

SECTION 15. A new section to the North Dakota Century Code is created and enacted as follows:

Permanent impairment - Compensation - Time paid. The injured employee's doctor shall report to the bureau any rating of any permanent impairment of function as the result of the injury except for total losses claimed under section 18. If the injured employee's doctor does not perform evaluations to rate permanent impairment of function, the doctor may refer the employee to a doctor who does perform such evaluations, and the bureau shall pay all reasonable charges for such evaluation. Any rating of the percentage of functional impairment should be in accordance with the standards for the evaluation of permanent impairment as published in the edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" used by the bureau on July 1, 1993, unless proven otherwise by clear and convincing medical evidence. An award for permanent partial impairment is not compensation for wage loss. The doctor's report must include a clinical report in sufficient detail to support the percentage

ratings assigned. Any subsequent award for impairment must be made minus any previous award given on any earlier claim or the same claim for that same member or body part. If the injury causes permanent impairment, other than scheduled injuries, as elsewhere provided for in this chapter, the percentage which such impairment bears to total impairment must be determined, and the fund shall pay to the impaired employee a lump sum, calculated by multiplying thirty-three and one-third percent of the average weekly wage in this state rounded to the next highest dollar, on the date the impairment is determined, by the following number of weeks, depending upon the percentage of impairment:

<u>For a one percent impairment</u>	<u>5 weeks.</u>
<u>For a ten percent impairment</u>	<u>50 weeks.</u>
<u>For a twenty percent impairment</u>	<u>100 weeks.</u>
<u>For a thirty percent impairment</u>	<u>150 weeks.</u>
<u>For a forty percent impairment</u>	<u>200 weeks.</u>
<u>For a fifty percent impairment</u>	<u>250 weeks.</u>
<u>For a sixty percent impairment</u>	<u>300 weeks.</u>
<u>For a seventy percent impairment</u>	<u>350 weeks.</u>
<u>For an eighty percent impairment</u>	<u>400 weeks.</u>
<u>For a ninety percent impairment</u>	<u>450 weeks.</u>

SECTION 16. A new section to the North Dakota Century Code is created and enacted as follows:

Permanent impairment. When there is a dispute as to the percentage of an employee's permanent impairment, all medical evidence must be submitted to an independent physician who has not treated the employee or who has not been consulted by the bureau in relation to the injury upon which the impairment is based. The bureau shall establish a comprehensive list of physicians who are medical specialists within the state. The bureau and the claimant shall choose a physician to review a disputed permanent impairment rating by striking names from the list until a name is chosen. The decision of the independent physician is presumptive evidence of the degree of permanent impairment of the employee.

SECTION 17. A new section to the North Dakota Century Code is created and enacted as follows:

Scheduled injuries - Permanent loss of member - Compensation - Time compensation payable. If the injury causes the loss of a member, the fund shall pay to the impaired employee a lump sum, calculated by multiplying thirty-three and one-third percent of the average weekly wage in this state rounded to the next highest dollar, on the date the impairment is determined, by the following number of weeks, depending upon the percentage of impairment:

<u>1. For loss of arm at shoulder</u>	<u>250 weeks.</u>
<u>2. For loss of arm at or above the elbow</u>	<u>220 weeks.</u>
<u>3. For loss of hand at or above wrist</u>	<u>200 weeks.</u>
<u>4. For loss of thumb</u>	<u>65 weeks.</u>
<u>5. For loss of second or distal phalanx of thumb</u>	<u>28 weeks.</u>
<u>6. For loss of first finger</u>	<u>40 weeks.</u>
<u>7. For loss of middle or second phalanx of first finger</u>	<u>28 weeks.</u>
<u>8. For loss of third or distal phalanx of first finger</u>	<u>22 weeks.</u>
<u>9. For loss of second finger</u>	<u>30 weeks.</u>
<u>10. For loss of middle or second phalanx of second finger</u>	<u>22 weeks.</u>
<u>11. For loss of third or distal phalanx of second finger</u>	<u>14 weeks.</u>
<u>12. For loss of third finger</u>	<u>20 weeks.</u>

<u>13. For loss of middle or second phalanx of third finger</u>	<u>16 weeks.</u>
<u>14. For loss of third or distal phalanx of third finger</u>	<u>10 weeks.</u>
<u>15. For loss of fourth finger</u>	<u>16 weeks.</u>
<u>16. For loss of middle or second phalanx of fourth finger</u>	<u>12 weeks.</u>
<u>17. For loss of third or distal phalanx of fourth finger</u>	<u>6 weeks.</u>
<u>18. For loss of leg at hip</u>	<u>234 weeks.</u>
<u>19. For loss of leg at or above knee</u>	<u>195 weeks.</u>
<u>20. For loss of foot at or above ankle</u>	<u>150 weeks.</u>
<u>21. For loss of great toe</u>	<u>30 weeks.</u>
<u>22. For loss of second or distal phalanx of great toe</u>	<u>18 weeks.</u>
<u>23. For loss of any other toe</u>	<u>12 weeks.</u>
<u>24. For loss of middle or second phalanx of any other toe</u>	<u>10 weeks.</u>
<u>25. For loss of third or distal phalanx of any other toe</u>	<u>7 weeks.</u>
<u>26. For loss of an eye</u>	<u>150 weeks.</u>
<u>27. For loss of hearing in one ear</u>	<u>50 weeks.</u>
<u>28. For loss of hearing in both ears</u>	<u>200 weeks.</u>

The amount paid for the loss of more than one finger of one hand may not exceed the amount provided in this schedule for the loss of a hand. For the loss of the metacarpal bone, of the palm, together with the corresponding thumb or finger, ten weeks must be added to the number of weeks of payment. The permanent loss of use of a thumb, finger, toe, arm, hand, foot, leg, or eye must be considered as the equivalent of the loss of such thumb, finger, toe, arm, hand, foot, leg, or eye, and compensation for partial loss of use of said parts must be allowed on a percentage basis. Twenty-five percent additional must be allowed as compensation for the loss of use of the master hand or any member or members thereof. The loss of any part of a phalanx must be considered equal to the loss of the entire phalanx. If any employee dies from independent cause, the right of any compensation payable under section 16 or this section, unpaid at the date of his death, shall survive and pass to his dependent spouse, minor children, parents, or his estate and in that order named. Wherever possible, an impairment award must be made under the terms of this section.

Recovery under this section shall bar an additional award of permanent for the same injury, as elsewhere provided in this chapter. If a compensable injury causes an impairment under this section, and also causes impairment to a part of the body which cannot be compensated under the terms of this section, a whole body award may be made under section 16 if such award is not duplicative.

An impairment award made by the bureau in the past under this section or section 16 must be deducted from a subsequent impairment award for injury to the same part of the body.

SECTION 18. A new section to the North Dakota Century Code is created and enacted as follows:

Scheduled injuries - Partial loss of use of member - Weekly compensation time - Compensation payable. If an injury causes permanent impairment of a member, the sight of an eye, or the hearing in an ear, the fund shall pay to the impaired employee a weekly compensation for that proportion of the number of weeks specified in the schedule in section 18 for the loss of such member, the sight of an eye, or the hearing in an ear, which the partial loss of the use thereof bears to the total loss of the use of such member, eye, or ear.

Recovery under this section shall bar an additional award of permanent impairment for the same injury, as elsewhere provided in this chapter.

SECTION 19. AMENDMENT. Section 65-05-28 of the North Dakota Century Code is amended and reenacted as follows:

65-05-28. Examination of injured employee - Paid expenses - No compensation paid if claimant refuses to reasonably participate. Every employee who sustains an injury may select a doctor of that employee's choice to render initial treatment. Upon a determination that the employee's injury is compensable, the bureau may require the employee to begin treating with another doctor, ~~to better direct the medical aspects of the injured employee's claim~~ if the employee's care falls beneath community standards. ~~The~~ In that event, the bureau shall provide a list of three doctors who specialize in the treatment of the type of injury the employee sustained. At the bureau's request, the employee shall select a doctor from the list. An injured employee shall follow the directives of the doctor or health care provider who is treating the employee as chosen by the employee at the request of the bureau, and comply with all reasonable requests during the time the employee is under medical care. Providing further that:

1. No employee may change from one doctor to another while under treatment or after being released, without the prior written authorization of the bureau. Failure to obtain approval of the bureau renders the employee liable for the cost of treatment ~~and the new doctor will not be considered the attending doctor for purposes of certifying temporary disability.~~ The bureau may not unreasonably withhold approval.
 - a. Any employee requesting a change of doctor shall file a written request with the bureau stating all reasons for the change. Upon receipt of the request, the bureau will review the employee's case and approve or deny in writing the change of doctor within seven days, notifying the employee and the requested doctor.
 - b. Emergency care or treatment or referral by the attending doctor ~~does not constitute a change of doctor and~~ does not require prior approval of the bureau.
2. Travel and other personal reimbursement for seeking and obtaining medical care is paid only upon request of the injured employee. All claims for reimbursement must be supported by the original vendor receipt and must be submitted within one year of the date the expense was incurred or reimbursement must be denied. Reimbursement must be made at the bureau reimbursement rates in effect on the date of incurred travel or expense. Mileage calculations must be based upon the atlas or map mileage from city limit to city limit and do not include intracity mileage. Providing further that:
 - a. No payment for mileage or other travel expenses may be made when the distance traveled is less than fifty miles [80.47 kilometers] one way, unless the total mileage equals or exceeds two hundred miles [321.87 kilometers] in a calendar month;
 - b. All travel reimbursements are payable at the rate at which state employees are paid per diem and mileage, except that the bureau may pay no more than actual cost of meals and lodging, if actual cost is less;
 - c. Reimbursements may not be paid for travel other than that necessary to obtain the closest available medical or hospital care

- needed for the injury. If the injured employee chooses to seek medical treatment outside a local area where care is available, travel reimbursement may be denied;
- d. Reimbursement may not be paid for the travel and associated expenses incurred by the injured employee's spouse, children, or other persons unless the employee's injury prevents travel alone and the inability is medically substantiated; and
 - e. Other expenses, including telephone calls and car rentals are not reimbursable expenses.
3. The bureau may at any time require an employee to submit to an independent medical examination by a duly qualified doctor ~~or doctors designated or approved by the bureau~~ whose primary practice is in North Dakota, unless the employee and the bureau agree to an independent medical examination by an out-of-state physician. The independent medical examination must be for the purpose of review of the diagnosis, prognosis, treatment, or fees. The employee may have a duly qualified doctor designated by that employee present at the examination if procured and paid for by that employee. ~~Providing further that;~~
- a. ~~In case of any disagreement between doctors making an examination on the part of the bureau and the employee's doctor, the bureau shall appoint an impartial doctor duly qualified who shall make an examination and shall report to the bureau.~~
 - b. The employee, in the discretion of the bureau, ~~may~~ shall be paid reasonable travel and other per diem expenses under the guidelines of subsection 2. If the employee is working and loses gross wages from the employee's employer for attending the examination, the gross wages must be reimbursed as a miscellaneous expense upon receipt of a signed statement from the employer verifying the gross wage loss.
4. If an employee, or the employee's representative, refuses to submit to, or in any way intentionally obstructs, any examination, or refuses reasonably to participate in medical or other treatments, the employee's right to claim compensation under this title is suspended until the refusal or obstruction ceases. No compensation is payable while the refusal or obstruction continues, and the period of the refusal or obstruction must be deducted from the period for which compensation is payable to the employee.

SECTION 20. AMENDMENT. Section 65-05-35 of the North Dakota Century Code is amended and reenacted as follows:

65-05-35. ~~Closed~~ Inactive claim - Presumption.

1. A claim for benefits under this title is presumed closed if:
 - a. A doctor's report has been filed indicating the employee has reached maximum medical recovery; and

- a. Return to the same position.
 - b. ~~Return to the same occupation, any employer.~~
 - e. Return to a modified position.
 - d. ~~Return to a modified or alternative occupation, any employer.~~
 - e. c. Return to ~~an~~ a related occupation in the local job pool which is suited to the employee's education, experience, and marketable skills.
 - f. d. Return to ~~an~~ a related occupation in the statewide job pool which is suited to the employee's education, experience, and marketable skills.
 - g. e. On-the-job training suited to return the employee to the statewide job pool.
 - h. f. Short-term retraining within North Dakota of fifty-two weeks or less suited to return the employee to the statewide job pool.
 - i. g. Long-term retraining within North Dakota of ~~one~~ two hundred ~~four~~ eight weeks or less suited to return the employee to the statewide job pool.
 - j. h. Self-employment.
5. If an option listed in subdivision a, b, e, d, e, f, or g of subsection 4 has been identified as appropriate for an injured employee and the employee is initially released by the doctor to return to part-time employment with the reasonable expectation of attaining full-time employment, the bureau shall pay temporary partial disability benefits under section 65-05-10 until the doctor determines the employee is medically capable of full-time employment.
6. a. If the vocational consultant concludes that none of the priority options under subsection 4 of section 65-05.1-01 are viable, and will not return the employee to the lesser of ~~sixty-six and two-thirds~~ ninety percent of the average weekly wage, or ~~ninety percent~~ of the employee's preinjury earnings, the employee shall continue to minimize the loss of earnings capacity, to seek, obtain, and retain employment:
- (1) a. That meets the employee's ~~functional capacities~~ medical limitations;
 - (2) b. For which the employee meets the qualifications to compete; and
 - (3) c. That will reasonably result in retained earnings capacity equivalent to the lesser of ~~ninety percent~~ of the employee's preinjury earnings or ~~the state's current hourly minimum wage~~ sixty-six and two-thirds percent of the average weekly wage in the state on the date the rehabilitation consultant's report is issued. ~~If an employee is initially released to part-time employment by the doctor, the income test defined under this paragraph must be waived provided there is a reasonable expectation that the employee will return to full-time~~

employment meeting the income test previously defined under this paragraph.

- ~~b.~~ Under section 65-05-10, the bureau shall award partial disability based on retained earnings capacity calculated under this section.
- ~~7.~~ 6. ~~The~~ By agreement between the bureau and the employee, the income test in subsection 3 ~~must~~ and the priority options in subsection 4 may be waived ~~when an employer offers the employee a return to work option at a wage lower than the income test as defined under subsection 3 or when the bureau and the employee agree to waive the income test and the priority options.~~
- ~~8.~~ 7. Vocational rehabilitation services may be initiated by:
- a. The bureau on its own motion; or
 - b. The bureau or the employer if proof exists:
 - (1) That the employee has reached maximum medical recovery;
 - (2) That the employee is not working and is not voluntarily retired or removed from the labor force; and
 - (3) That the employee has made good faith efforts to seek, obtain, and retain employment.
- ~~9.~~ 8. Chapter 50-06.1 does not apply to determinations of eligibility for vocational rehabilitation made pursuant to this chapter.

SECTION 22. AMENDMENT. Section 65-05.1-04 of the North Dakota Century Code is amended and reenacted as follows:

65-05.1-04. Injured employee responsibility.

1. The injured employee shall seek, obtain, and retain reasonable and substantial employment to reduce the period of temporary disability to a minimum. The employee has the burden of establishing that the employee has met this responsibility.
2. If the injured employee is unable to obtain substantial employment as a direct result of injury, the employee shall promptly notify the bureau under subdivision b of subsection 7 of section 65-05.1-01.
3. The injured employee shall be available for testing under subsection 6 or 7 of section 65-05.1-02, and for any further examinations and testing as may be prescribed by the bureau to determine whether or not a program of rehabilitation is necessary. ~~The injured employee also shall participate in remedial or other educational services when those services are determined to be necessary by the bureau or the vocational consultant. If the employee is noncompliant with this subsection, the bureau shall suspend benefits during the period of noncompliance.~~
4. If the first appropriate rehabilitation option under subsection 4 of section 65-05.1-01 is return to the same; or modified; ~~or alternative occupation position~~, or return to ~~an~~ related occupation that is suited to the

employee's education, experience, and marketable skills, or on-the-job training, the employee is responsible to make a good faith work trial or work search. If the employee fails to perform a good faith work trial or work search, the finding of nondisability or partial disability is res judicata, and the bureau may not reinstate temporary total disability benefits or recalculate an award of partial disability benefits in the absence of a significant change in medical condition attributable to the work injury. The bureau shall recalculate the partial disability award, however, if the employee returns, in good faith to gainful employment. If the employee meets the burden of proving that the employee made a good faith work trial or work search and that the work trial or work search was unsuccessful due to the injury, the bureau shall reevaluate the employee's vocational rehabilitation claim. ~~A good faith work search that does not result in placement is not, in itself, sufficient grounds to prove the work injury caused the inability to acquire gainful employment. The employee shall show that the injury significantly impacts the employee's ability to successfully compete for gainful employment in that the injury leads employers to favor those without limitations over the employee.~~

5. If the first appropriate rehabilitation option under subsection 4 of section 65-05.1-01 is short-term or long-term training, the employee shall cooperate with the necessary testing to determine whether the proposed training program meets the employee's medical limitations and aptitudes. The employee shall attend a qualified rehabilitation training program when ordered by the bureau. A qualified training program is a rehabilitation plan that meets the criteria of this title, is the approved option of the rehabilitation consultant, or is a stipulated rehabilitation plan under subsection 6 of section 65-05.1-01, and commences within a reasonable period of time such as the next quarter or semester. The bureau and the employee, by agreement, may waive the income test applicable under this subsection.
6. If, without good cause, the injured employee fails to perform a good faith work trial in a return to the same; or modified; or alternative occupation position, or in an on-the-job training program, or fails to make a good faith work search in return to work utilizing the employee's transferable skills, the employee is in noncompliance with vocational rehabilitation. ~~If, without good cause, the injured employee fails to attend specific vocational testing, remedial, or other vocational services determined necessary by the bureau or the rehabilitation consultant, the employee is in noncompliance with vocational rehabilitation.~~ If, without good cause, the injured employee fails to attend a scheduled medical or vocational assessment, or fails to attend a specific qualified rehabilitation program within ten days from the date the rehabilitation program commences, the employee is in noncompliance with vocational rehabilitation. If, without good cause, the employee discontinues a job the employee is performing, or a training program in which the employee is enrolled, the employee is in noncompliance with vocational rehabilitation. ~~If at any time the employee is noncompliant without good cause the~~ employee establishes a pattern of noncooperation as heretofore described, involving two or more incidents of noncooperation, subsequent efforts by the employee to come into compliance with vocational rehabilitation are may not considered be deemed successful compliance until the employee has successfully returned to the job or training program for a period of sixty days. In all cases of

noncompliance by the employee, the bureau, by administrative order, shall discontinue lost-time benefits. If, after the bureau order becomes final, the period of noncompliance continues for sixty days, ~~or a second instance of noncompliance occurs without good cause,~~ the bureau has no further jurisdiction in awarding any further temporary total disability, temporary partial disability, permanent total disability, or vocational rehabilitation benefits.

SECTION 23. AMENDMENT. Subsection 1 of section 65-05.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Within sixty days of receipt of the final vocational consultant's report, the bureau shall issue an administrative order under chapter 28-32 detailing the employee's entitlement to lost-time and vocational rehabilitation services. The bureau shall establish a reasonable hourly rate to compensate an employee's attorney for legal service in connection with vocational rehabilitation prior to the issuance of an administrative order.

In addition, the bureau shall establish a reasonable hourly rate to compensate an employee's vocational rehabilitation expert when the employee prevails in a dispute over the administrative order.

SECTION 24. AMENDMENT. Section 65-10-01 of the North Dakota Century Code is amended and reenacted as follows:

65-10-01. Appeal from decision of bureau. If the final action of the bureau denies the right of the claimant to participate at all in the fund on the ground that the injury was self-inflicted, or on the ground that the accident did not arise in the course of employment, or upon any other ground going to the basis of the claim, or if the bureau allows the claimant to participate in the fund to a lesser degree than that claimed by the claimant, if such allowance is less than the maximum allowance provided by this title, the claimant may appeal to the district court of the county wherein the injury was inflicted or of the county in which the claimant resides. An employer may also appeal a decision of the bureau in any injury case in the manner prescribed in this section. An appeal involving injuries allegedly covered by insurance provided under contracts with extraterritorial coverage shall be triable in the district court of Burleigh County. Any appeal under this section shall be taken in the manner provided in chapter 28-32. Any appeal to the district court shall be heard on the record, transmitted from the bureau, and, in the discretion of the court, additional evidence may be presented pertaining to the questions of law involved in the appeal. The bureau shall prepare the certified record without charge to any other party to the appeal.

SECTION 25. AMENDMENT. Section 65-10-03 of the North Dakota Century Code is amended and reenacted as follows:

65-10-03. Cost of appeal and attorney's fees fixed by the bureau. The bureau shall pay the cost of the judicial appeal and the attorney's fee for an injured employee's attorney when the employee prevails. The employee is deemed to have prevailed when any part of the decision of the bureau is reversed or the claim is remanded to the bureau for further administrative proceedings.

In an appeal by the bureau or an employer to the district court or the North Dakota supreme court, the claimant shall recover costs and attorney's fees incurred in responding to the appeal. The bureau shall pay the attorney's fee from the

bureau general fund. The amount of the attorney's fee must be determined in the same manner as prescribed by the bureau for attorney fees, and the amount of attorney's fee already allowed in administrative proceedings before the bureau must be taken into consideration. ~~The bureau shall establish, pursuant to section 65-02-08, a maximum fee to be paid in an appeal. The maximum fee may be exceeded upon application of the injured employee and approval of the court, upon a finding that the claim had clear and substantial merit, and that the legal or factual issues involved in the appeal were unusually complex.~~ Notwithstanding the foregoing, the bureau is liable for its costs on appeal if the decision of the bureau is affirmed.

SECTION 26. REPEAL. Section 65-02-19 of the North Dakota Century Code, dealing with workers compensation administrative services, is repealed.

SECTION 27. REPEAL. Section 65-02-20 of the North Dakota Century Code, dealing with the workers compensation managed care program, is repealed.

SECTION 28. REPEAL. Section 65-05-12.2 of the North Dakota Century Code, dealing with permanent impairments, is repealed.

SECTION 29. REPEAL. Section 65-01-15 of the 1993 Supplement to the North Dakota Century Code, dealing with documentation of tobacco use, is repealed.

SECTION 30. REPEAL. Section 65-05-01.2 of the North Dakota Century Code, dealing with notice of work injuries, is repealed.

SECTION 31. REPEAL. Section 65-05-01.3 of the North Dakota Century Code, dealing with failure to notify, is repealed.

SECTION 32. REPEAL. Section 65-05-01.4 of the North Dakota Century Code, dealing with employer's report of injury, is repealed.

SECTION 33. REPEAL. Section 65-05-01.5 of the North Dakota Century Code, dealing with notice of claim filing requirements, is repealed.

SECTION 34. REPEAL. Subsection 5 of section 65-05-28 of the North Dakota Century Code, dealing with aggravation of work injuries, is repealed.

Disapproved June 11, 1996

28,071 to 79,543

NOTE: This was measure No. 7 on the primary election ballot.

CHAPTER 563

VETERANS' HOMES

An initiated measure to provide authority for the administrative committee on veterans' affairs to obtain loans from the veterans' postwar trust fund for a western veterans home and cedar grove veterans home and to control the cedar grove building module at the developmental center; to amend and reenact section 25-04-01 of the North Dakota Century Code, relating to the developmental center at westwood park, Grafton; and to provide for an exception to the moratorium on expansion of basic or long-term care bed capacity and funding for a veterans home at Stanley and a veterans home at Grafton.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. AUTHORITY TO OBTAIN LOAN - WESTERN VETERANS HOME - CONDITIONS. The administrative committee on veterans' affairs may obtain a loan from the veterans' postwar trust fund to meet matching requirements for receiving federal, state or other funds, and use the proceeds to construct a basic or long-term care facility at Stanley, North Dakota, to be known as the western veterans home. State general funds may be used until federal funds are obtained under 38 U.S.C. 5033. These funds may not exceed three million dollars. The loan authorized by this section may not exceed one million five hundred thousand dollars. The loan obtained under this section must be repaid solely from room rate collections from residents of the western veterans home. The residency requirements for admission to the veterans' home in section 37-15-10 do not apply to admissions to the western veterans home. The term of a loan under this section may not exceed thirty years.

SECTION 2. AUTHORITY TO OBTAIN LOAN - CEDAR GROVE VETERANS HOME - CONDITIONS. The administrative committee on veterans' affairs may obtain a loan from the veterans' postwar trust fund to meet matching requirements for receiving federal funds, and may use the proceeds to renovate or make alterations to a basic or long-term care veterans' home, to be located in the cedar grove building at the developmental center at westwood park, Grafton. The loan authorized by this section may not exceed one hundred thousand dollars. The loan must be used solely to meet matching requirements for obtaining federal funds under 38 U.S.C. 5033, and the authority to apply for the loan is conditional upon receiving a grant of such federal funds for the use of the cedar grove veterans home. The loan obtained under this section must be repaid solely from room rate collections from residents of the cedar grove veterans home. Private funds and other funds may be used to renovate the cedar grove facility. The residency requirements for admission to the veterans' home in section 37-15-10 do not apply to admissions to the cedar grove veterans home. Any evidences of indebtedness issued under this section may not become a general obligation of the state of North Dakota. The term of a loan under this section may not exceed thirty years.

SECTION 3. AMENDMENT. Section 25-04-01 of the North Dakota Century Code is amended and reenacted as follows:

25-04-01. Developmental center at westwood park, Grafton - Name - Administration and control. A facility for developmentally disabled persons must be maintained at or near the city of Grafton in Walsh County. The facility must also

be available for a person who is determined to be a person who may benefit from the facility's services. The facility must be known and designated as the developmental center at westwood park, Grafton. The department of human services has administrative authority and control of the developmental center at westwood park, Grafton, and westwood park, except as otherwise provided in section 4 of this Act.

SECTION 4. CEDAR GROVE BUILDING MODULE AT DEVELOPMENTAL CENTER - ADMINISTRATION AND CONTROL. The administrative committee on veterans' affairs has administrative authority and control of the cedar grove building module located at the developmental center at westwood park, Grafton, to be used as a state basic or long-term care veterans' home. In administration of the cedar grove building module, the administrative committee on veterans' affairs may purchase services and personal property from the developmental center at westwood park, Grafton under contract with the department of human services.

SECTION 5. MORATORIUM ON EXPANSION OF BASIC OR LONG-TERM CARE BED CAPACITY - EXEMPTION. The moratorium on expansion of basic or long-term care bed capacity under sections 2 and 3 of chapter 254 of the 1995 Session Laws does not apply to the basic or long-term care facilities for veterans established under sections 1 and 2.

SECTION 6. OPERATING FUNDS FOR THE VETERANS HOME AT STANLEY AND THE VETERANS HOME AT GRAFTON. The North Dakota legislature shall provide funding for the operations of the veterans home at Stanley and the veterans home at Grafton. Funding shall be available upon approval of the veterans home by the United States veterans administration.

Disapproved June 11, 1996

46,528 to 64,284

NOTE: This was measure No. 8 on the primary election ballot.

CHAPTER 564

TERM LIMITS

An initiated measure to create and enact section 4.1 of article IV, a new section to article V, and sections 27, 28, 29, 30, 31, 32, and 33 of article XI of the Constitution of North Dakota, relating to state legislative, state executive branch, and congressional term limits; and to provide for transition.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. Sections 27 through 33 of article XI of the Constitution of North Dakota are created and enacted as follows:

Section 27. Preamble.

1. The people of the state of North Dakota want to amend the United States Constitution to establish term limits on Congress that will ensure representation in Congress by true citizen lawmakers. The President of the United States is limited by the twenty-second amendment to two terms in office. The governors in forty states are limited to two or fewer terms in office. Voters have established term limits for over two thousand state legislators as well as over seventeen thousand local officials across the country.
2. Nevertheless, Congress has ignored our desire for term limits, not only by proposing excessively long terms for its own members, but also by utterly refusing to pass an amendment for genuine congressional term limits. Congress has a clear conflict of interest in considering a term limits amendment to the United States Constitution. A majority of both republicans and democrats in the one hundred fourth Congress voted against a constitutional amendment containing the term limits passed by the people of North Dakota by a wide margin in 1992.
3. The people, not Congress, should set term limits. Therefore, by this initiated amendment, we establish as the official position of the people of North Dakota that our elected officials should enact by constitutional amendment congressional term limits of three terms in the United States house of representatives and two terms in the United States senate.
4. The career politicians dominating Congress have a conflict of interest that prevents Congress from being what the founders intended -- the branch of government closest to the people. They have voted to dramatically raise their own pay. They have provided lavish million-dollar pensions for themselves. They have granted themselves numerous other privileges at the expense of the people. Most importantly, members of Congress have enriched themselves while running up huge deficits to support their spending. They have put the government nearly five trillion dollars in debt, gravely threatening the future of our children and grandchildren.
5. The corruption and appearance of corruption brought about by political careerism is destructive to the proper functioning of the first branch of our representative government. Congress has grown increasingly distant

from the people of the states. The people have the sovereign right and a compelling interest in creating a citizen Congress that will more effectively protect our freedom and prosperity. This interest and right may not effectively be served in any way other than that proposed by this initiative.

6. Therefore, we state our intention on behalf of the people of North Dakota, that this amendment lead to the adoption of the following amendment to the Constitution of the United States:

CONGRESSIONAL TERM LIMITS AMENDMENT

Section A. No person shall serve in the office of United States representative for more than three terms, but upon ratification no person who has held the office or who then holds the office shall serve for more than two additional terms.

Section B. No person shall serve in the office of United States senator for more than two terms, but upon ratification no person who has held the office or who then holds the office shall serve for more than one additional terms.

Section C. This article shall have no time limit within which it must be ratified to become operative upon the ratification by the legislatures of three-fourths of the several states.

7. Therefore, we, the people of North Dakota, have chosen to amend the state constitution to inform voters about incumbent and nonincumbent federal candidates' support for the congressional terms limits amendment described in subsection 6.

Section 28. Voter instruction on term limits for members of Congress.

1. We, the people of North Dakota, instruct each member of our congressional delegation to use all of that member's delegated powers to pass the congressional term limits amendment described in section 27(6) of this article.
2. Each primary and general election ballot must have displayed the information "DISREGARDED VOTER INSTRUCTION ON TERM LIMITS", in type at least as large and prominent as the name, next to the name of each United States senator and each United States representative who did any of the following acts:
 - a. Failed to vote in favor of the proposed congressional term limits amendment, described in section 27(6) of this article, when brought to a vote.
 - b. Failed to second the proposed congressional term limits amendment, described in section 27(6) of this article, if it lacks for a second before any proceeding of the legislative body.
 - c. Failed to proposed, or otherwise bring to a vote of the full legislative body, the proposed congressional term limits amendment, described in section 27(6) of this article, if it otherwise lacks a

legislator who so proposes or brings it to a vote of the full legislative body.

- d. Failed to vote in favor of all votes bringing the proposed congressional term limits amendment, described in section 27(6) of this article, before any committee or subcommittee of the legislative body on which the member serves.
 - e. Failed to reject any attempt to delay, table, or otherwise prevent a vote by the full legislative body, of the proposed congressional term limits amendment, as described in section 27(6) of this article.
 - f. Failed to vote against any proposed constitutional amendment that would establish term limits longer than those in the proposed congressional term limits amendment, described in section 27(6) of this article.
 - g. Sponsored or cosponsored any proposed constitutional amendment that would establish term limits longer than those in the proposed congressional term limits amendment, described in section 27(6) of this article.
 - h. Failed to ensure that all votes on the proposed congressional term limits amendment, described in section 27(6) of this article, are recorded and made available to the public.
3. Publication of the ballot information described in subsection 2 is not required if the proposed congressional term limits amendment, described in section 27(6) of this article, is before the states for ratification or has become part of the United States Constitution.

Section 29. Voter instruction on term limits for nonincumbent candidates for Congress.

1. Each nonincumbent candidate for United States senator or United States representative may take the "term limits" pledge described in subsection 3 each time the individual is a candidate for either office. If such a candidate declines to the pledge, there must be displayed, on each primary and general election ballot, the information "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS", in type at least as large and prominent as the name, next to the name of candidate who declined to take the pledge.
2. The "term limits" pledge must be offered to each nonincumbent candidate for United States senator or United States representative at each primary and general election until the congressional term limits amendment described in section 27(6) of this article becomes part of the United States Constitution.
3. The "term limits" pledge to be offered to each nonincumbent candidate for United States senator or United States representative is as follows:

I support term limits and pledge to use all my legislative powers to enact the proposed constitutional amendment described in section 27(6) of this article. If enacted, I pledge to vote in such a way that the information

"DISREGARDED VOTER INSTRUCTION ON TERM LIMITS" will not appear next to my name.

Signature of candidate

Section 30. Duties of secretary of state.

1. The secretary of state shall make an accurate determination as to whether each candidate for the federal legislature is required to have displayed next to the candidates name the information "DISREGARDED VOTER INSTRUCTION ON TERM LIMITS" or "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS."
2. In making the determination required under subsection 1, the secretary of state shall consider timely submitted public comments before doing so. The secretary may rely on comments and information submitted by the candidates in making the determination.
3. With respect to incumbent members of Congress, the secretary of state shall make the determination in a fashion necessary to ensure the orderly printing of primary and general election ballots, with allowance made for all legal action provided in this section, and must be based on the action each member of Congress took during the member's current term of office and any action taken in any concluded term, if that action was taken after the determination and declaration by the secretary of state for a previous election.
4. With respect to nonincumbent candidates for Congress, the secretary of state shall make the determination required in subsection 1 no later than five business days after the deadline for filing for the office.
5. A party aggrieved by the determination of the secretary of state under subsection 1 may appeal that determination to the North Dakota supreme court as a matter of original jurisdiction. The appeal must be filed with the supreme court within five business days of the secretary's designation or is deemed waived.
6. If the determination of the secretary of state was to not include beside the candidate's name the information described in subsection 1, the aggrieved party is any elector of this state and the burden of persuasion is on the secretary of state by a standard of clear and convincing evidence.
7. If the determination of the secretary of state was to include beside the candidate's name the information described in subsection 1, the aggrieved party is the candidate and the burden of persuasion is on the candidate by a standard of clear and convincing evidence.
8. The supreme court shall give prompt attention to each appeal filed under subsection 6 and issue a decision within sixty days. The supreme court shall give prompt attention to each appeal filed under subsection 7 and issue a decision at least sixty-one days before the election.

Section 31. Exclusive jurisdiction of supreme court. Any legal challenge to this section of this initiated amendment must be filed as a matter of exclusive original jurisdiction with the supreme court of North Dakota.

Section 32. Severability. If any portion, clause, or phrase of sections 27 through 33 of this article is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, the remaining portions, clauses, and phrases are not affected, but remain in full force and effect.

Section 33. Contingent automatic repeal. If the United States Constitution is amended to include a term limits amendment such as described in section 27(6) of this article, sections 28 through 33 of this article are repealed, effective ninety days after the amendment to the United States Constitution is certified to have taken effect in accordance with federal law.

SECTION 2. Section 4.1 of article IV of the Constitution of North Dakota is created and enacted as follows:

Section 4.1. Number of terms of members. If the term of office of a member is two years, a person may not serve for more than three terms in that office. If the term of office of a member is four years, a person may not serve for more than two terms in that office. Service as a representative does not disqualify a person from serving as a senator, and service as a senator does not disqualify a person from serving as a representative.

SECTION 3. A new section to article V (as it existed on January 1, 1996, or as it was amended in 1996, if that case applies) of the Constitution of North Dakota is created and enacted as follows:

Term limits on executive officers - Retention of elected status.

1. A person may not serve in any office established in this article for more than the following number of terms:
 - a. If the term of office is more than four years, one term.
 - b. If the term of office is not more than four years, two terms.
2. Service in another office established in this article does not disqualify a person from serving in another office so established.
3. If an office established in this article was an elective office on January 1, 1996, that status may not be changed except by a further amendment to this constitution voted on by the people after December 31, 1996. Any contrary amendment to this constitution approved in 1996 is expressly repealed to that extent.

SECTION 4. Transitional provisions.

1. Sections 2 and 3 of this measure do not affect the right of any person, holding an elected office when this term limits measure was submitted to the secretary of state for his approval, from serving out the rest of the term to which the person had been elected. Past service in an office does not disqualify a person from running for that office at the election at which this measure is submitted to the people and from serving out the term to which the person is then elected. Service in an office in any

term that began before this term limits measure was submitted to the secretary of state for his approval is not included in determining eligibility to run for future terms.

2. This section is repealed, without further action of the people, at the expiration of the term of office during which occurs the death of the last surviving person who, when this measure was submitted to the secretary of state for his approval, had at any time held an office described in this measure.

Disapproved November 5, 1996

116,241 to 129,187

NOTE: This was measure No. 5 on the general election ballot.

CHAPTER 565

CONSTITUTIONAL CONVENTION

An initiated measure to create and enact sections 11 through 14 of article III of the Constitution of North Dakota, relating to a petition to the Congress of the United States to call a constitutional convention, in accordance with article V of the Constitution of the United States, to establish term limits for members of Congress; and to amend and reenact section 7 of article III of the Constitution of the state of North Dakota, relating to jurisdiction of the North Dakota Supreme Court.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. Section 7 of article III of the Constitution of North Dakota is amended and reenacted as follows:

Section 7. Judicial proceedings.

1. All decisions of the ~~secretary~~ Secretary of state ~~State~~ in the petition process are subject to review by the ~~supreme court~~ Supreme Court in the exercise of its original jurisdiction. If his decision is being reviewed at the time the ballot is prepared, he shall place the measure on the ballot and no court action shall invalidate the measure if it is approved at the election by a majority of the votes cast thereon.
2. The Supreme Court has original and exclusive jurisdiction over any challenge to this initiative or its enactments. However, it has no jurisdiction to find that this initiative is in conflict with the constitution of this state.

SECTION 2. Section 11 to article III of the Constitution of North Dakota is created and enacted as follows:

11. Statement of people's purpose for section 11 through 14.

1. The people of this state desire to amend the United States Constitution to establish term limits on Congress, thereby ensuring representation in Congress by true citizen lawmakers. The President of the United States is limited by the twenty-second amendment to two terms in office. Governors in forty states are limited to two terms or less. Voters have established term limits for over two thousand state legislators as well as over seventeen thousand local officials across the country.
2. Nevertheless, Congress has ignored our desire for term limits, not only by proposing excessively long terms for its own members, but also by utterly refusing to pass an amendment for genuine congressional term limits. Congress has a clear conflict of interest in proposing a term limits amendment to the United States Constitution.
3. The people, not Congress, should set term limits. We establish as the official position of the people of this state that congressional term limits shall be no longer than three terms in the United States house of representatives, nor longer than two terms in the United States senate.

4. The career politicians dominating Congress have a conflict of interest that prevents Congress from being what the founders intended - the branch of government closest to the people. The politicians have refused to heed the will of the people for term limits. They have voted to dramatically raise their own pay, provided lavish million-dollar pensions for themselves, and granted themselves numerous other privileges at the expense of the people. Most importantly, members of Congress have enriched themselves while running up huge deficits to support their spending. They have put the government nearly five trillion dollars in debt, gravely threatening the future of our children and grandchildren.
5. The abuse of power, corruption, and appearance of corruption, brought about by political careerism is destructive to the proper functioning of the first branch of our representative government. Congress has grown increasingly distant from the people of the states. We have the sovereign right and a compelling interest in creating a citizen Congress that will more effectively protect our freedom and prosperity. This interest and right may not effectively be served in any way other than that proposed by this initiative.
6. The foresight of our founders provided a path around congressional self-interest under article V of the United States Constitution. Under article V, the people may seek a convention to amend the Constitution when the legislatures of two-thirds, or thirty-four, states apply for such a convention. Amendments proposed by that convention become part of the Constitution upon the ratification of three-fourths, or thirty-eight states. Therefore, exercising the powers we reserved to ourselves under section 1 of this article, we amend our state constitution to state our desire that this application on behalf of the people and legislative assembly of North Dakota, leads to the adoption of the following constitutional amendment:

CONGRESSIONAL TERM LIMITS AMENDMENT

Section A. No person shall serve in the office of United States representative for more than three terms, but upon ratification no person who has held the office of United States representative or who then holds office shall serve in the office for more than two additional terms.

Section B. No person shall serve in the office of United States senator for more than two terms, but upon ratification no person who has held the office of United States senator or who holds office shall serve in the office for more than one additional term.

Section C. This article shall have no time limit within which it must be ratified to become operative upon the ratification by the legislatures of three-fourths of the several states.

SECTION 3. Section 12 to article III of the Constitution of North Dakota is created and enacted as follows:

12. Application to Congress. In the exercise of the power we reserved to ourselves under section 1 of this article, and for this purpose serving as the legislature of this state, as described in article IV of this Constitution and in article V of the Constitution of the United States, we the people submit the following application to the Congress of the United States:

Application: We, the people of North Dakota, due to our desire to establish term limits on the Congress of the United States, acting as the legislature of the state of North Dakota, exercising our power under our constitution and under article V of the Constitution of the United States, apply to Congress to call an article V convention.

SECTION 4. Section 13 to article III of the Constitution of North Dakota is created and enacted as follows:

13. Duty of the Secretary of State. Upon approval of this initiative, the Secretary of State shall transmit an official copy of this initiative, and the application contained in it, to the Secretary of State of the United States, the clerk of the United States house of representatives, the speaker of the house, the clerk of the United States senate, the president pro tempore of the senate, and to the legislatures of the other forty-nine states.

SECTION 5. Section 14 to article III of the Constitution of North Dakota is created and enacted to read as follows:

14. Dissolution. Having applied to Congress in the exercise of our power under the constitutions of this state and of the United States, we dissolve the legislature composed of the voters, continuing to reserve to ourselves the power we reserved under section 1 of this article. The action of the people of North Dakota in acting as the legislature does not otherwise affect any other law or part of this constitution.

Disapproved November 5, 1996

105,878 to 132,348

NOTE: This was measure No. 6 on the general election ballot.

REFERRED MEASURE APPROVED

CHAPTER 566

WORKERS' COMPENSATION PERMANENT IMPAIRMENT AWARDS

Approval by referendum of Senate Bill No. 2202 of the Fifty-fourth Legislative Assembly, which revised statutory provisions for workers' compensation permanent partial impairment awards. The bill established a minimum level of 16 percent impairment before any permanent partial impairment award may be made for a work injury. The bill increased permanent partial impairment awards for injuries resulting in more than 50 percent impairment. The bill required objective medical evidence of nerve or structural damage for injuries resulting in loss of strength, sensation, or range of motion. The bill required review by an independent physician when there is a dispute about the percentage of an injured employee's permanent impairment. The bill repealed the schedule of awards for loss of specific body members.

Approved June 11, 1996

72,207 to 37,346

NOTE: This was measure No. 9 on the primary election ballot.

CONSTITUTIONAL AMENDMENTS APPROVED

CHAPTER 567

HOUSE CONCURRENT RESOLUTION NO. 3030 (Representative Maragos)

COMPACT WITH UNITED STATES

House Concurrent Resolution No. 3030, Chapter 645, 1995 Session Laws, proposed by the Fifty-fourth Legislative Assembly of the State of North Dakota, to create and enact a new section to article XIII of the Constitution of North Dakota, relating to the compact with the United States; and for the amendment of sections 1 and 2 of article XIII of the Constitution of North Dakota, relating to jurisdiction over certain military reservations.

STATEMENT OF INTENT

This amendment creates a new section to article XIII of the Constitution of North Dakota to incorporate by reference provisions of the Enabling Act of 1889 and eliminates language made unnecessary by the new section.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed new section to article XIII and amendment to sections 1 and 2 of article XIII of the Constitution of North Dakota are agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in June 1996, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 1 of article XIII of the Constitution of North Dakota is amended and reenacted as follows:

Section 1.

- 4: Perfect toleration of religious sentiment ~~shall~~ must be secured, and no inhabitant of this state ~~shall~~ may ever be molested in person or property on account of ~~his or her~~ that person's mode of religious worship.
- 2: The people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States; and that said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; provided, however, that the legislative assembly of the state of North Dakota may, upon such terms and

conditions as it shall adopt, provide for the acceptance of such jurisdiction as may be delegated to the state by Act of Congress; that the lands belonging to citizens of the United States residing without this state shall never be taxed at a higher rate than the lands belonging to residents of this state; that no taxes shall be imposed by this state on lands or property therein, belonging to, or which may hereafter be purchased by the United States or reserved for its use. But nothing in this article shall preclude this state from taxing as other lands are taxed, any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person, a title thereto, by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any Acts of Congress containing a provision exempting the lands thus granted from taxation, which last mentioned lands shall be exempt from taxation so long, and to such an extent, as is, or may be provided in the Act of Congress granting the same.

3. In order that payment of the debts and liabilities contracted or incurred by and on behalf of the territory of Dakota may be justly and equitably provided for and made, and in pursuance of the requirements of an Act of Congress approved February 22, 1889, entitled "An act to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments and to be admitted into the union on an equal footing with the original states, and to make donations of public lands to such states," the states of North Dakota and South Dakota, by proceedings of a joint commission, duly appointed under said Act, the sessions whereof were held at Bismarck in said state of North Dakota, from July 16, 1889, to July 31, 1889, inclusive, have agreed to the following adjustment of the amounts of the debts and liabilities of the territory of Dakota which shall be assumed and paid by each of the states of North Dakota and South Dakota, respectively, to wit:

This agreement shall take effect and be in force from and after the admission into the union, as one of the United States of America, of either the state of North Dakota or the state of South Dakota:

The words "State of North Dakota" whenever used in this agreement, shall be taken to mean the territory of North Dakota in case the state of South Dakota shall be admitted into the union prior to the admission into the union of the state of North Dakota; and the words "State of South Dakota," whenever used in this agreement, shall be taken to mean the territory of South Dakota in case the state of North Dakota shall be admitted into the union prior to the admission into the union of the state of South Dakota.

The said state of North Dakota shall assume and pay all bonds issued by the territory of Dakota to provide funds for the purchase, construction, repairs or maintenance of such public institutions, grounds or buildings as are located within the boundaries of North Dakota, and shall pay all warrants issued under and by virtue of that certain Act of the legislative assembly of the territory of Dakota, approved March 8, 1889, entitled "An act to provide for the refunding of outstanding warrants drawn on the capitol building fund."

The said state of South Dakota shall assume and pay all bonds issued for the territory of Dakota to provide funds for the purchase, construction, repairs or maintenance of such public institutions, grounds or buildings as are located within the boundaries of South Dakota.

That is to say: The state of North Dakota shall assume and pay the following bonds and indebtedness, to wit:

Bonds issued on account of the hospital for the insane at Jamestown, North Dakota, the face aggregate of which is \$266,000; also bonds issued on account of the North Dakota university at Grand Forks, North Dakota, the face aggregate of which is \$96,700; also, bonds issued on account of the penitentiary at Bismarck, North Dakota, the face aggregate of which is \$93,600; also, refunding capitol building warrants dated April 1, 1889, \$83,507.46.

And the state of South Dakota shall assume and pay the following bonds and indebtedness, to wit:

Bonds issued on account of the hospital for the insane at Yankton, South Dakota, the face aggregate of which is \$210,000; also, bonds issued on account of the school for deaf mutes, at Sioux Falls, South Dakota, the face aggregate of which is \$51,000; also, bonds issued on account of the university at Vermillion, South Dakota, the face aggregate of which is \$75,000; also, bonds issued on account of the penitentiary at Sioux Falls, South Dakota, the face aggregate of which is \$94,300; also, bonds issued on account of the agricultural college at Brookings, South Dakota, the face aggregate of which is \$97,500; also, bonds issued on account of the normal school at Madison, South Dakota, the face aggregate of which is \$49,400; also, bonds issued on account of the school of mines at Rapid City, South Dakota, the face aggregate of which is \$33,000; also, bonds issued on account of the reform school at Plankinton, South Dakota, the face aggregate of which is \$30,000; also, bonds issued on account of the normal school at Spearfish, South Dakota, the face aggregate of which is \$25,000; also, bonds issued on account of the soldiers' home at Hot Springs, South Dakota, the face aggregate of which is \$45,000.

The states of North Dakota and South Dakota shall pay one-half each of all liabilities now existing or hereafter and prior to the taking effect of this agreement incurred, except those heretofore or hereafter incurred on account of public institutions, grounds or buildings, except as otherwise herein specifically provided:

The state of South Dakota shall pay to the state of North Dakota \$46,500, on account of the excess of territorial appropriations for the permanent improvement of territorial institutions which under this agreement will go to South Dakota, and in full of the undivided one-half interest of North Dakota in the territorial library, and in full settlement of unbalanced accounts, and of all claims against the territory, of whatever nature, legal or equitable, arising out of the alleged erroneous or unlawful taxation of Northern Pacific railroad lands, and the payment of said amount shall discharge and exempt the state of South Dakota from all liability for or on account of the several matters hereinbefore referred to; nor shall either state be called upon to pay or answer to any portion of liability hereafter arising or accruing on account of

transactions heretofore had, which liability would be a liability of the territory of Dakota had such territory remained in existence, and which liability shall grow out of matters connected with any public institutions, grounds or buildings of the territory situated or located within the boundaries of the other state.

A final adjustment of accounts shall be made upon the following basis: North Dakota shall be charged with all sums paid on account of the public institutions, grounds or buildings located within its boundaries on account of the current appropriations since March 9, 1889; and South Dakota shall be charged with all sums paid on account of public institutions, grounds or buildings located within its boundaries on the same account and during the same time. Each state shall be charged with one-half of all other expenses of the territorial government during the same time. All moneys paid into the treasury during the period from March 8, 1889, to the time of taking effect of this agreement by any county, municipality or person within the limits of the proposed state of North Dakota, shall be credited to the state of North Dakota; and all sums paid into said treasury within the same time by any county, municipality or person within the limits of the proposed state of South Dakota shall be credited to the state of South Dakota; except that any and all taxes on gross earnings paid into said treasury by railroad corporations, since the 8th day of March, 1889, based upon earnings of years prior to 1888, under and by virtue of the Act of the legislative assembly of the territory of Dakota, approved March 7, 1889, and entitled, "An act providing for the levy and collection of taxes upon property of railroad companies in this territory," being chapter 107 of the Session Laws of 1889 (that is, the part of such sums going to the territory), shall be equally divided between the states of North Dakota and South Dakota; and all taxes heretofore or hereafter paid into said treasury under and by virtue of the Act last mentioned, based on the gross earnings of the year 1888, shall be distributed as already provided by law, except that so much thereof as goes to the territorial treasury shall be divided as follows: North Dakota shall have so much thereof as shall be or has been paid by railroads within the limits of the proposed state of North Dakota, and South Dakota so much thereof as shall be or has been paid by railroads within the limits of the proposed state of South Dakota; each state shall be credited also with all balances of appropriations made by the seventeenth legislative assembly of the territory of Dakota for the account of the public institutions, grounds or buildings situated within its limits remaining unexpended on March 8, 1889. If there shall be any indebtedness except the indebtedness represented by the bonds and refunding warrants hereinbefore mentioned, each state shall at the time of such final adjustment of accounts, assume its share of said indebtedness as determined by the amount paid on account of the public institutions, grounds or buildings of such state in excess of the receipts from counties, municipalities, railroad corporations or persons within the limits of said state, as provided in this article; and if there should be a surplus at the time of such final adjustment, each state shall be entitled to the amounts received from counties, municipalities, railroad corporations or persons within its limits over and above the amount charged it.

And the state of North Dakota hereby obligates itself to pay such part of the debts and liabilities of the territory of Dakota as is declared by the foregoing agreement to be its proportion thereof, the same as if

~~such proportion had been originally created by said state of North Dakota as its own debt or liability.~~

SECTION 2. AMENDMENT. Section 2 of article XIII of the Constitution of North Dakota is amended and reenacted as follows:

Section 2. Jurisdiction is ceded to the United States over the military reservations of Fort Abraham Lincoln, Fort Buford, Fort Pembina, and Fort Totten, heretofore declared by the president of the United States; provided, legal process, civil and criminal, of this state, ~~shall extend~~ extends over such those reservations in all cases in which exclusive jurisdiction is not vested in the United States, or of crimes not committed within the limits of ~~such those~~ such those reservations. The legislative assembly may provide, upon the terms and conditions it adopts, for the acceptance of any jurisdiction as may be delegated to the state by act of Congress.

SECTION 3. A new section to article XIII of the Constitution of North Dakota is created and enacted as follows:

All other provisions of the Enabling Act of Congress approved on February 22, 1889, 25 United States Statutes at Large 676, chapter 180, and section 1 of this article of the Constitution of North Dakota, as section 1 existed immediately before the adoption of this section, are continued in effect as though fully recited and continue to be irrevocable without the consent of the United States and the people of this state.

Approved June 11, 1996

63,934 to 36,795

NOTE: This was measure No. 3 on the primary election ballot.

CHAPTER 568

HOUSE CONCURRENT RESOLUTION NO. 3009

(Legislative Council)
(Interim Judiciary Committee)
(Representatives Brown, Klein)
(Senator W. Stenehjem)

EXECUTIVE BRANCH ARTICLE

House Concurrent Resolution No. 3009, Chapter 646, 1995 Session Laws, proposed by the Fifty-fourth Legislative Assembly of the State of North Dakota, to create and enact a new article V of the Constitution of North Dakota, relating to the executive branch of government, to the election, qualification, and compensation of executive officials, to the powers and duties of the governor, and to gubernatorial succession; to repeal the present article V of the Constitution of North Dakota, relating to the executive branch of government, to the election and qualification of executive officials, to the powers and duties of the governor, and to gubernatorial succession; and to provide an effective date.

STATEMENT OF INTENT

This measure creates a new executive branch article for the Constitution of North Dakota that retains all the current elected state officials. The amendment provides for the election and qualification of executive officials, for the powers and duties of the governor, and for gubernatorial succession. The amendment also repeals the present article V of the Constitution of North Dakota and provides that these changes will take effect on July 1, 1997.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed creation of a new article V and the following proposed repeal of the present article V of the Constitution of North Dakota are agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in 1996, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. A new section to a new article V of the Constitution of North Dakota is created and enacted as follows:

The executive power is vested in the governor, who shall reside in the state capital and shall hold the office for the term of four years beginning in the year 2000, and until a successor is elected and qualified.

SECTION 2. A new section to a new article V of the Constitution of North Dakota is created and enacted as follows:

The qualified electors of the state at the times and places of choosing members of the legislative assembly shall choose a governor, lieutenant governor, agriculture commissioner, attorney general, auditor, insurance commissioner, three

public service commissioners, secretary of state, superintendent of public instruction, tax commissioner, and treasurer. The legislative assembly may by law provide for a department of labor to be administered by a public official who may be either elected or appointed.

The powers and duties of the agriculture commissioner, attorney general, auditor, insurance commissioner, public service commissioners, secretary of state, superintendent of public instruction, tax commissioner, and treasurer must be prescribed by law. If the legislative assembly establishes a labor department, the powers and duties of the officer administering that department must be prescribed by law.

SECTION 3. A new section to a new article V of the Constitution of North Dakota is created and enacted as follows:

The governor and the lieutenant governor must be elected on a joint ballot. Each vote cast for a candidate for governor is deemed cast also for the candidate for lieutenant governor running jointly with the candidate for governor. The joint candidates having the highest number of votes must be declared elected. If two or more joint candidates have an equal and highest number of votes for governor and lieutenant governor, the legislative assembly in joint session at its next regular session shall choose one pair of joint candidates for the offices. The returns of the election for governor and lieutenant governor must be made in the manner prescribed by law.

SECTION 4. A new section to a new article V of the Constitution of North Dakota is created and enacted as follows:

To be eligible to hold an elective office established by this article, a person must be a qualified elector of this state, must be at least twenty-five years of age on the day of the election, and must have been a resident of this state for the five years preceding election to office. To be eligible to hold the office of governor or lieutenant governor, a person must be at least thirty years old on the day of the election. The attorney general must be licensed to practice law in this state.

SECTION 5. A new section to a new article V of the Constitution of North Dakota is created and enacted as follows:

The qualified electors shall choose the elected state officials at a time designated by the legislative assembly. The elected state officials shall serve until their successors are duly qualified. Terms of office are four years, except that terms of the public service commissioners are six years, so arranged that one of them is elected every two years. The terms of the governor and lieutenant governor begin on December fifteenth following their election.

If two or more candidates for any executive office other than for governor and lieutenant governor receive an equal and highest number of votes, the legislative assembly in joint session shall choose one of them for the office.

SECTION 6. A new section to a new article V of the Constitution of North Dakota is created and enacted as follows:

The elected state officials and the chief executive officers of the principal departments shall hold office in the state capital.

SECTION 7. A new section to a new article V of the Constitution of North Dakota is created and enacted as follows:

The governor is the chief executive of the state. The governor shall have the responsibility to see that the state's business is well administered and that its laws are faithfully executed.

The governor is commander-in-chief of the state's military forces, except when they are called into the service of the United States, and the governor may mobilize them to execute the laws and maintain order.

The governor shall prescribe the duties of the lieutenant governor in addition to those prescribed in this article.

The governor may call special sessions of the legislative assembly.

The governor shall present information on the condition of the state, together with any recommended legislation, to every regular and special session of the legislative assembly.

The governor shall transact and supervise all necessary business of the state with the United States, the other states, and the officers and officials of this state.

The governor may grant reprieves, commutations, and pardons. The governor may delegate this power in a manner provided by law.

SECTION 8. A new section to a new article V of the Constitution of North Dakota is created and enacted as follows:

The governor may fill a vacancy in any office by appointment if no other method is provided by this constitution or by law. If, while the senate is recessed or adjourned, a vacancy occurs in any office that is filled by appointment with senate confirmation, the governor shall make a temporary appointment to the office. When the senate reconvenes the governor shall make a nomination to fill the office. Except on request of the senate, no nominee rejected by the senate may again be nominated for that office at the same session, nor may the nominee be appointed to that office during a recess or adjournment of the senate.

SECTION 9. A new section to a new article V of the Constitution of North Dakota is created and enacted as follows:

Every bill passed by the legislative assembly must be presented to the governor for the governor's signature. If the governor signs the bill, it becomes law.

The governor may veto a bill passed by the legislative assembly. The governor may veto items in an appropriation bill. Portions of the bill not vetoed become law.

The governor shall return for reconsideration any vetoed item or bill, with a written statement of the governor's objections, to the house in which it originated. That house shall immediately enter the governor's objections upon its journal. If, by a recorded vote, two-thirds of the members elected to that house pass a vetoed item or bill, it, along with the statement of the governor's objections, must immediately be delivered to the other house. If, by a recorded vote, two-thirds of the members elected to the other house also pass it, the vetoed item or bill becomes law.

While the legislative assembly is in session, a bill becomes law if the governor neither signs nor vetoes it within three legislative days after its delivery to the governor. If the legislative assembly is not in session, a bill becomes law if the governor neither signs nor vetoes it within fifteen days, Saturdays and Sundays excepted, after its delivery to the governor.

SECTION 10. A new section to a new article V of the Constitution of North Dakota is created and enacted as follows:

A governor who asks, receives, or agrees to receive any bribe upon any understanding that the governor's official opinion, judgment, or action shall be influenced thereby, or who gives or offers, or promises the governor's official influence in consideration that any member of the legislative assembly shall give the member's official vote or influence on any particular side of any question or matter upon which the member may be required to act in the member's official capacity, or who menaces any member by the threatened use of the governor's veto power, or who offers or promises any member that the governor will appoint any particular person or persons to any office created or thereafter to be created, in consideration that any member shall give the member's official vote or influence on any matter pending or thereafter to be introduced into either house of the legislative assembly, or who threatens any member that the governor will remove any person or persons from office or position with intent in any manner to influence the action of that member, must be punished in the manner now, or that may hereafter be, provided by law, and upon conviction thereof forfeits all right to hold or exercise any office of trust or honor in this state.

SECTION 11. A new section to a new article V of the Constitution of North Dakota is created and enacted as follows:

The lieutenant governor shall succeed to the office of governor when a vacancy occurs in the office of governor. If, during a vacancy in the office of governor, the lieutenant governor is unable to serve because of death, impeachment, resignation, failure to qualify, removal from office, or disability, the secretary of state shall act as governor until the vacancy is filled or the disability removed.

SECTION 12. If Senate Concurrent Resolution No. 4013 is not approved by the fifty-fourth legislative assembly, or if Senate Concurrent Resolution No. 4013 is approved by the fifty-fourth legislative assembly but is not approved by the qualified electors at the primary election held in 1996, then the following new section to a new article V of the Constitution of North Dakota is created and enacted as follows:

The lieutenant governor shall serve as president of the senate. If the senate is equally divided on a question, the lieutenant governor may vote on procedural matters and on substantive matters if the lieutenant governor's vote would be decisive.

SECTION 13. REPEAL. The present article V of the Constitution of North Dakota is repealed.

SECTION 14. EFFECTIVE DATE. If approved by the voters, this measure becomes effective on July 1, 1997.

Approved June 11, 1996

67,354 to 35,591

NOTE: This was measure No. 4 on the primary election ballot.

CHAPTER 569

SENATE CONCURRENT RESOLUTION NO. 4023

(Senators Holmberg, W. Stenehjem, Traynor)
(Representative Kretschmar)

BOARD OF HIGHER EDUCATION MEMBERSHIP

Senate Concurrent Resolution No. 4023, Chapter 647, 1995 Session Laws, proposed by the Fifty-fourth Legislative Assembly of the State of North Dakota, for the amendment of subsection 2 of section 6 of article VIII of the Constitution of North Dakota, relating to the appointment and terms of members of the state board of higher education.

STATEMENT OF INTENT

This amendment reduces the term of office for members of the board of higher education from seven to four years and provides that members may not serve more than two terms. The amendment requires that the membership of the board be maintained in a balanced and representative manner, that no more than one person holding a bachelor's degree from a particular institution serve on the board at any one time, and that the president pro tempore of the senate and the speaker of the house be added to the nominating committee for the board of higher education.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to subsection 2 of section 6 of article VIII of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 1996, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Subsection 2 of section 6 of article VIII of the Constitution of North Dakota is amended and reenacted as follows:

2. a. The state board of higher education consists of eight members. The governor shall appoint seven members who are qualified electors and taxpayers of the state, and who have resided in this state for not less than five years immediately preceding their appointments. These seven appointments are subject to confirmation by the senate.

The governor shall appoint as the eighth member of the board a full-time resident student in good academic standing at an institution under the jurisdiction of the state board. Except for the student member, no more than one ~~graduate of any person holding a bachelor's degree from a particular~~ institution under the jurisdiction of the state board of higher education may serve on the board at any one time. Except for the student member, no person employed by any institution under the control of the board shall serve as a member of the board and no employee of any such institution may be eligible for membership on the state board of

higher education for a period of two years following the termination of employment.

The governor shall nominate from a list of three names for each position, selected by ~~the unanimous~~ action of four of the following five persons: the president of the North Dakota ~~educational~~ education association, the chief justice of the supreme court, ~~and~~ the superintendent of public instruction, the president pro tempore of the senate, and the speaker of the house of representatives and, with the consent of a majority of the members-elect of the senate, shall appoint from the list to the state board of higher education seven members. The governor shall ensure that the board membership is maintained in a balanced and representative manner. The term of office of members appointed to fill vacancies at the expiration of said terms shall be for ~~seven~~ four years, and in the case of vacancies otherwise arising, appointments shall be made only for the balance of the term of the members whose places are to be filled. A member may not be appointed to serve for more than two terms. If a member is appointed to fill a vacancy and serves two or more years of that term, the member is deemed to have served one full term.

- b. In the event any nomination made by the governor is not consented to and confirmed by the senate, the governor shall again nominate a candidate selected from a new list. The nomination shall be submitted to the senate for confirmation and the proceedings shall continue until an appointee has been confirmed by the senate or the session of the legislature has adjourned.
- c. If a term expires or a vacancy occurs when the legislature is not in session, the governor may appoint from a list selected as provided, a member who shall serve until the opening of the next session of the legislature, at which time the appointment must be certified to the senate for confirmation. If the appointee is not confirmed by the thirtieth legislative day of the session, the office shall be deemed vacant and the governor shall nominate another candidate for the office. The same proceedings shall be followed as are set forth in this section. If the legislature is in session at any time within six months prior to the date of the expiration of the term of any member, the governor shall nominate a successor from a list selected as above set forth, within the first thirty days of the session and upon confirmation by the senate the successor shall take office at the expiration of the incumbent's term. No person who has been nominated and whose nomination the senate has failed to confirm is eligible for an interim appointment. On or before July first of each year, beginning in 1995, the governor shall appoint a student member from a list of names recommended by the executive board of the North Dakota student association for a term of one year, beginning on July first. A student member may not serve more than two consecutive terms.

Approved November 5, 1996

165,361 to 77,666

NOTE: This was measure No. 1 on the general election ballot.

CHAPTER 570

HOUSE CONCURRENT RESOLUTION NO. 3010

(Legislative Council)
(Interim Judiciary Committee)
(Representatives Brown, Coats, Klein)

HOUSE MEMBER TERMS

House Concurrent Resolution No. 3010, Chapter 649, 1995 Session Laws, proposed by the Fifty-fourth Legislative Assembly of the State of North Dakota, for the amendment of sections 3 and 4 of article IV of the Constitution of North Dakota, relating to the term of members of the house of representatives; and to provide an effective date.

STATEMENT OF INTENT

These amendments change the term of members of the house of representatives from two years to four years and authorize the legislative assembly to establish a procedure whereby one-half of the members of the house of representatives are elected biennially. The amendments will take effect on July 1, 1997.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed amendments to sections 3 and 4 of article IV of the Constitution of North Dakota are agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 1996, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 3 of article IV of the Constitution of North Dakota is amended and reenacted as follows:

Section 3. The legislative assembly shall establish by law a procedure whereby one-half of the members of the senate and one-half of the members of the house of representatives, as nearly as is practicable, are elected biennially.

SECTION 2. AMENDMENT. Section 4 of article IV of the Constitution of North Dakota is amended and reenacted as follows:

Section 4. Senators and representatives must be elected for terms of four years ~~and representatives for terms of two years~~.

SECTION 3. EFFECTIVE DATE. If approved by the voters, this measure becomes effective on July 1, 1997.

Approved November 5, 1996

132,718 to 112,047

NOTE: This was measure No. 3 on the general election ballot.

CONSTITUTIONAL AMENDMENTS DISAPPROVED

CHAPTER 571

SENATE CONCURRENT RESOLUTION NO. 4013

(Legislative Council)
(Interim Judiciary Committee)
(Senators Redlin, W. Stenehjem, Traynor)
(Representatives Kretschmar, Brown)

LIEUTENANT GOVERNOR LEGISLATIVE DUTIES ELIMINATED

Senate Concurrent Resolution No. 4013, Chapter 643, 1995 Session Laws, proposed by the Fifty-fourth Legislative Assembly of the State of North Dakota, for the amendment of sections 8 and 13 of article IV, section 7 of article V, and section 9 of article XI of the Constitution of North Dakota, relating to election of presiding officers of the legislative assembly, legislative procedures, powers and duties of the lieutenant governor, and impeachment proceedings; and to repeal section 13 of article XI of the Constitution of North Dakota, relating to impeachment proceedings.

STATEMENT OF INTENT

This amendment removes the lieutenant governor as presiding officer of the senate and provides that the presiding officer of the senate must be elected from the membership of the senate.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendments to sections 8 and 13 of article IV, section 7 of article V, section 9 of article XI, and repeal of section 13 of article XI of the Constitution of North Dakota are agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in 1996, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 8 of article IV of the Constitution of North Dakota is amended and reenacted as follows:

Section 8. ~~The Each~~ house of ~~representatives~~ shall elect one of its members to act as presiding officer at the beginning of each organizational session.

SECTION 2. AMENDMENT. Section 13 of article IV of the Constitution of North Dakota is amended and reenacted as follows:

Section 13. Each house shall keep a journal of its proceedings, and a recorded ~~voted~~ vote on any question shall be taken at the request of one-sixth of those members present. No bill may become law except by a recorded vote of a

majority of the members elected to each house; and the lieutenant governor is considered a member-elect of the senate when the lieutenant governor votes.

No law may be enacted except by a bill passed by both houses, and no bill may be amended on its passage through either house in a manner which changes its general subject matter. No bill may embrace more than one subject, which must be expressed in its title; but a law violating this provision is invalid only to the extent the subject is not so expressed.

Every bill must be read on two separate natural days, and the readings may be by title only unless a reading at length is demanded by one-fifth of the members present.

No bill may be amended, extended, or incorporated in any other bill by reference to its title only, except in the case of definitions and procedural provisions.

The presiding officer of each house shall sign all bills passed and resolutions adopted by the legislative assembly, and the fact of signing shall be entered at once in the journal.

Every law, except as otherwise provided in this section, enacted by the legislative assembly during its eighty natural meeting days takes effect on August first after its filing with the secretary of state, or if filed on or after August first and before January first of the following year ninety days after its filing, or on a subsequent date if specified in the law unless, by a vote of two-thirds of the members elected to each house, the legislative assembly declares it an emergency measure and includes the declaration in the Act. Every appropriation measure for support and maintenance of state departments and institutions and every tax measure that changes tax rates enacted by the legislative assembly take effect on July first after its filing with the secretary of state or on a subsequent date if specified in the law unless, by a vote of two-thirds of the members elected to each house, the legislative assembly declares it an emergency measure and includes the declaration in the Act. An emergency measure takes effect upon its filing with the secretary of state or on a date specified in the measure. Every law enacted by a special session of the legislative assembly takes effect on a date specified in the Act.

The legislative assembly shall enact all laws necessary to carry into effect the provisions of this constitution. Except as otherwise provided in this constitution, no local or special laws may be enacted, nor may the legislative assembly indirectly enact special or local laws by the partial repeal of a general law but laws repealing local or special laws may be enacted.

SECTION 3. AMENDMENT. Section 7 of article V of the Constitution of North Dakota is amended and reenacted as follows:

Section 7. The powers and duties of the lieutenant governor shall be ~~to serve as president of the senate, and he may, when the senate is equally divided, vote on procedural matters, and on substantive matters if his vote would be decisive.~~ Additional duties shall be prescribed by the governor. If, during the vacancy in the office of governor, the lieutenant governor shall be impeached, displaced, resign, or die, or from mental or physical disease, or otherwise become incapable of performing the duties of his office, the secretary of state shall act as governor until the vacancy ~~shall be~~ is filled or the disability removed.

SECTION 4. AMENDMENT. Section 9 of article XI of the Constitution of North Dakota is amended and reenacted as follows:

Section 9. All impeachments shall be tried by the senate. When sitting for that purpose the senators shall be upon oath or affirmation to do justice according to the law and evidence. No person shall be convicted without the concurrence of two-thirds of the members elected. ~~When the governor or lieutenant governor is on trial, the presiding judge of the supreme court shall preside.~~

SECTION 5. REPEAL. Section 13 of article XI of the Constitution of North Dakota is repealed.

Disapproved June 11, 1996

45,067 to 62,902

NOTE: This was measure No. 1 on the primary election ballot.

CHAPTER 572

SENATE CONCURRENT RESOLUTION NO. 4018

(Senator Heinrich)
(Representative Rydell)

STATE LAND AND MINERAL INTEREST EXCHANGES

Senate Concurrent Resolution No. 4018, Chapter 644, 1995 Session Laws, proposed by the Fifty-fourth Legislative Assembly of the State of North Dakota, for the amendment of section 6 of article IX of the Constitution of North Dakota, relating to exchanges of state land and mineral rights.

STATEMENT OF INTENT

This amendment allows for the exchange of land and mineral interests between the board of university and school lands and private owners and Indian tribes and eliminate the requirement that the board of university and school lands reserve mineral rights in all land transfers.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to section 6 of article IX of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in June 1996, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 6 of article IX of the Constitution of North Dakota is amended and reenacted as follows:

Section 6. No original grant school or institutional land shall be sold for less than the fair market value thereof, and in no case for less than ten dollars (\$10.00) per acre, provided that when lands have been sold on contract and the contract has been canceled, such lands may be resold without reappraisal by the board of appraisal. The purchaser shall pay twenty (20) percent of the purchase price at the time the contract is executed; thereafter annual payments shall be made of not less than six (6) percent of the original purchase price. An amount equal to not less than three (3) percent per annum of the unpaid principal shall be credited to interest and the balance shall be applied as payment on principal as credit on purchase price. The purchaser may pay all or any installment or installments not yet due to any interest paying date. If the purchaser so desires, he may pay the entire balance due on his contract with interest to date of payment at any time and he will then be entitled to proper conveyance.

All sales shall be held at the county seat of the county in which the land to be sold is situated, and shall be at public auction and to the highest bidder, and notice of such sale shall be published once each week for a period of three weeks prior to the day of sale in a legal newspaper published nearest the land and in the newspaper designated for the publication of the official proceedings and legal notices within the county in which said land is situated.

No grant or patent for such lands shall issue until payment is made for the same; provided that the land contracted to be sold by the state shall be subject to taxation from the date of the contract. In case the taxes assessed against any of said lands for any year remain unpaid until the first Monday in October of the following year, the contract of sale for such land shall, if the board of university and school lands so determine, by it, be declared null and void. No contract of sale heretofore made under the provisions of this section of the constitution as then providing shall be affected by this amendment, except prepayment of principal may be made as herein provided.

Any of said lands that may be required for townsite purposes, schoolhouse sites, church sites, cemetery sites, sites for other educational or charitable institutions, public parks, airplane landing fields, fairgrounds, public highways, railroad right of way, or other railroad uses and purposes, reservoirs for the storage of water for irrigation, irrigation canals, and ditches, drainage ditches, or for any of the purposes for which private lands may be taken under the right of eminent domain under the constitution and laws of this state, may be sold under the provisions of this article, and shall be paid for in full at the time of sale, or at any time thereafter as herein provided. Any ~~of said lands and any other~~ lands controlled by the board of university and school lands, including state ~~coal~~ mineral interests, may, with the approval of ~~said~~ the board, be exchanged for lands and ~~coal~~ mineral interests of the United States, the state of North Dakota or any county or municipality thereof ~~as the legislature may provide, Indian tribe, or any private individual or entity,~~ and the lands so acquired shall be subject to the trust to which the lands exchanged therefor were subject; ~~and the state shall reserve all mineral and water power rights in land so transferred, except coal mineral interests approved for exchange by the board of university and school lands under this section.~~

When any of said lands have been heretofore or may be hereafter sold on contract, and the purchaser or his heirs or assigns is unable to pay in full for the land purchased within twenty years after the date of purchase and such contract is in default and subject to being declared null and void as by law provided, the board of university and school lands may, after declaring such contract null and void, resell the land described in such contract to such purchaser, his heirs or assigns, for the amount of the unpaid principal, together with interest thereon reckoned to the date of such resale at the rate of not less than three (3%) percent, but in no case shall the resale price be more than the original sale price; such contract of resale shall be upon the terms herein provided, provided this section shall be deemed self-executing insofar as the provisions for resale herein made are concerned.

Disapproved June 11, 1996

52,435 to 54,256

NOTE: This was measure No. 2 on the primary election ballot.

CHAPTER 573

SENATE CONCURRENT RESOLUTION NO. 4014

(Legislative Council)
(Interim Sovereign Immunity Committee)
(Senators Nething, Redlin, W. Stenehjem)
(Representatives Kretschmar, Aarsvold)

SOVEREIGN IMMUNITY

Senate Concurrent Resolution No. 4014, Chapter 648, 1995 Session Laws, proposed by the Fifty-fourth Legislative Assembly of the State of North Dakota, to create and enact a new section to the Constitution of North Dakota, relating to suits against the state and state employees; and to amend and reenact section 9 of article I of the Constitution of North Dakota, relating to suits against the state and state employees.

STATEMENT OF INTENT

This measure reinstates the doctrine of sovereign immunity.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed new section and proposed amendment to section 9 of article I of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 1996 in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 9 of article I of the Constitution of North Dakota is amended and reenacted as follows:

Section 9. All courts ~~shall~~ must be open, and every ~~man~~ person for any injury done ~~him in his~~ to lands, goods, person or reputation shall have remedy by due process of law, and right and justice administered without sale, denial, or delay. ~~Suits may be brought against the state in such manner, in such courts, and in such cases, as the legislative assembly may, by law, direct.~~

SECTION 2. A new section to the Constitution of North Dakota is created and enacted as follows:

Notwithstanding any other provision of the constitution, no suit may be brought against the state or an employee of the state acting within the employee's official capacity unless the legislative assembly provides by law the type of claims and the procedure through which those claims may be brought against the state or its employees.

Disapproved November 5, 1996

99,095 to 140,590

NOTE: This was measure No. 2 on the general election ballot.

CONSTITUTIONAL AMENDMENTS PROPOSED

CHAPTER 574

SENATE CONCURRENT RESOLUTION NO. 4005 (Senator Lips)

FILLING OF JUDICIAL VACANCIES

A concurrent resolution for the amendment of section 13 of article VI of the Constitution of North Dakota, relating to the filling of judicial vacancies.

STATEMENT OF INTENT

This amendment provides that a person appointed by the governor to fill a judicial vacancy on the supreme court or district court serves at least two years and until the next general election thereafter. The subsequent term for that judgeship may be reduced to allow for the minimum two-year term and for the staggering of judicial elections.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to section 13 of article VI of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in 1998, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 13 of article VI of the Constitution of North Dakota is amended and reenacted as follows:

Section 13.

1. A judicial nominating committee ~~shall~~ must be established by law. ~~Any~~ The governor shall fill any vacancy in the office of supreme court justice or district court judge shall be filled by appointment by the governor from a list of candidates nominated by the committee, unless the governor calls a special election to fill the vacancy for the remainder of the term. ~~An~~ Except as provided in subsection 2, an appointment shall must continue until the next general election, when the office ~~shall~~ must be filled by election for the remainder of the term.
2. An appointment must continue for at least two years. If the term of the appointed judgeship expires before the judge has served at least two years, the judge shall continue in the position until the next general election immediately following the service of at least two years.
3. Notwithstanding sections 7 and 9 of this article, the term of the judge elected at the subsequent general election provided for in subsection 2 is

reduced to the number of years remaining in the subsequent term after the appointee has served at least two years.

Filed March 28, 1997

NOTE: This will be measure No. 1 on the 1998 primary election ballot.

CHAPTER 575

SENATE CONCURRENT RESOLUTION NO. 4010

(Senators Solberg, Cook, Tomac)
(Representatives Carlson, Nichols, Tollefson)

HIGHER EDUCATION INSTITUTION REFERENCES

A concurrent resolution for the amendment of subsection 1 of section 6 of article VIII and sections 12 and 13 of article IX of the Constitution of North Dakota, relating to the names, locations, and missions of the institutions of higher education.

STATEMENT OF INTENT

This amendment removes references to the names, locations, and missions of the institutions of higher education.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendments to subsection 1 of section 6 of article VIII and sections 12 and 13 of article IX of the Constitution of North Dakota are agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 1998, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Subsection 1 of section 6 of article VIII of the Constitution of North Dakota is amended and reenacted as follows:

1. ~~A~~ The state board of higher education, ~~to be officially known as the state board of higher education,~~ is hereby created for the shall control and administration of administer the following state educational institutions, ~~to wit:~~
 - a. ~~The state university and school of mines, at Grand Forks, with their substations.~~
 - b. ~~The state agricultural college and experiment station, at Fargo, with their substations.~~
 - c. ~~The school of science, at Wahpeton.~~
 - d. ~~The state normal schools and teachers colleges, at Valley City, Mayville, Minot, and Dickinson.~~
 - e. ~~The school of forestry, at Bottineau.~~
 - f. ~~And such other~~ state institutions of higher education as may hereafter be established.

SECTION 2. AMENDMENT. Section 12 of article IX of the Constitution of North Dakota is amended and reenacted as follows:

Section 12. The following public institutions of the state are permanently located at the places hereinafter named, each to have the lands specifically granted to it by the United States in the Act of Congress approved February 22, 1889, to be disposed of and used in such manner as the legislative assembly may prescribe subject to the limitations provided in the article on school and public lands contained in this constitution.

1. The seat of government at the city of Bismarck in the county of Burleigh.
2. ~~The state university and the school of mines at the city of Grand Forks, in the county of Grand Forks.~~
3. ~~The North Dakota state university of agriculture and applied science at the city of Fargo, in the county of Cass.~~
4. ~~A state normal school at the city of Valley City, in the county of Barnes, and the legislative assembly, in apportioning the grant of eighty thousand acres of land for normal schools made in the Act of Congress referred to shall grant to the said normal school at Valley City, as aforementioned, fifty thousand (50,000) acres, and said lands are hereby appropriated to said institution for that purpose.~~
5. ~~The school for the deaf and dumb of North Dakota at the city of Devils Lake, in the county of Ramsey.~~
6. 3. ~~A state training industrial school at the city of Mandan, in the county of Morton.~~
7. ~~A state normal school at the city of Mayville, in the county of Traill, and the legislative assembly in apportioning the grant of lands made by Congress in the Act aforesaid for state normal schools shall assign thirty thousand (30,000) acres to the institution hereby located at Mayville, and said lands are hereby appropriated for said purpose.~~
8. 4. ~~A state hospital for the insane mentally ill at the city of Jamestown, in the county of Stutsman. And the The legislative assembly shall appropriate twenty thousand acres of the grant of lands made by the Act of Congress aforesaid for other educational and charitable institutions to the benefit and for the endowment of said institution, and there shall be located the state hospital.~~
5. An institution for the developmentally disabled at or near the city of Grafton, in the county of Walsh, an institution for the feebleminded, on the grounds purchased by the secretary of the interior for a penitentiary building.

SECTION 3. AMENDMENT. Section 13 of article IX of the Constitution of North Dakota is amended and reenacted as follows:

Section 13. The following public institutions are located as provided, each to have so much of the remaining grant of one hundred seventy thousand acres of land

made by the United States for "other educational and charitable institutions" as is allotted by law:

1. A ~~soldiers'~~ veterans' home, when located, or such other charitable institution as the legislative assembly may determine, at the city of Lisbon in the county of Ransom, with a grant of forty thousand acres of land.
2. The school for the blind at the city of Grand Forks in the county of Grand Forks or at ~~such other~~ another location as may be determined by the legislative assembly to be in the best interests of the students of ~~such~~ the institution and the state ~~of North Dakota~~.
3. A school of forestry, ~~or such other institution as the legislative assembly may determine, at such place in one of the counties of McHenry, Ward, Bottineau, or Rolette, as the electors of said counties may determine by an election for that purpose, to be held as provided by the legislative assembly.~~
4. A school of science ~~or such other educational or charitable institution as the legislative assembly may prescribe, at the city of Wahpeton in the county of Richland, with a grant of forty thousand acres.~~
5. A state college at the city of Minot in the county of ~~Ward~~.
6. A state college at the city of Dickinson in the county of ~~Stark~~.
7. A state hospital for the mentally ill at ~~such~~ a place within this state ~~as shall be selected by the legislative assembly.~~

No other institution of a character similar to any one of those located by article IX, section 12, or this section ~~shall~~ may be established or maintained without an amendment of this constitution.

Filed April 9, 1997

NOTE: This will be measure No. 1 on the 1998 general election ballot.

HOUSE CONCURRENT RESOLUTIONS

CHAPTER 576

HOUSE CONCURRENT RESOLUTION NO. 3001

(Legislative Council)
(Budget Committee on Government Finance)

DISTRICT COURT CLERK FUNDING STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of funding the office of the clerk of district court through the unified judicial system.

WHEREAS, the people of this state approved a new judicial article of the Constitution of North Dakota in 1976 establishing a unified judicial system consisting of a Supreme Court, a district court, and such other courts as may be provided by law; and

WHEREAS, subsequent initial efforts resulted in substantial unification of the judicial system through consolidation of county courts by the 1981 Legislative Assembly; and

WHEREAS, the 1991 Legislative Assembly considered further unification of the judicial system, enacting bills that provided a transitional process for establishing a single trial court of general jurisdiction by abolishing county courts and providing for additional district court judgeships but providing for the reduction in the total number of judges from 53 to 42 before January 2, 2001; and

WHEREAS, the 1989 Legislative Assembly enacted North Dakota Century Code Section 11-17-11, which provides a county option to transfer responsibility for funding the office of the clerk of district court to the state; and

WHEREAS, although this option provides a method of alleviating the cost to the counties of supporting district court functions, appropriations have not been provided to fund this option; and

WHEREAS, the feasibility and desirability of state funding of the office of the clerk of district court should be studied to assure that any changes made will benefit the citizens of the state and will serve the interests of the judicial system;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of funding the office of the clerk of district court through the unified judicial system; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 19, 1997

CHAPTER 577**HOUSE CONCURRENT RESOLUTION NO. 3002**

(Legislative Council)
(Budget Committee on Government Finance)

STATE INVESTMENT STUDY

A concurrent resolution directing the Legislative Council to study the state's investment process as it relates to the state bonding fund and the fire and tornado fund and monitor the performance of all investments of the State Investment Board and the Board of University and School Lands.

WHEREAS, it is beneficial for the state to realize maximum investment returns while minimizing investment risks; and

WHEREAS, the State Investment Board oversees the investment of the fire and tornado fund, which totaled \$16.1 million as of June 30, 1996, and the state bonding fund, which totaled \$3.7 million as of June 30, 1996, along with many other statutory and contracted funds totaling over \$2 billion; and

WHEREAS, the fire and tornado fund and the state bonding fund earned one-year annualized returns as of the June 30, 1996, of 6.45 percent and 6.98 percent, respectively, while other funds administered by the State Investment Board earned one-year annualized returns as of June 30, 1996, ranging from 5.63 percent to 24.7 percent; and

WHEREAS, the mission of the State Investment Board is to prudently invest assets entrusted to it in the best financial interests of each fund's beneficiaries; and

WHEREAS, the objectives of the Retirement and Investment Office include providing the greatest possible long-term benefits by maximizing the total rate of return on investments or maintaining the desired minimum balance in a fund, within prudent risk parameters and appropriate liquidity restraints; and

WHEREAS, the adequacy of the funds is dependent on the investment performance of the funds;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the state's investment process as it relates to the state bonding fund and the fire and tornado fund and to monitor the performance of all investments of the State Investment Board and the Board of University and School Lands; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 11, 1997

CHAPTER 578**HOUSE CONCURRENT RESOLUTION NO. 3003**

(Legislative Council)

(Budget Committee on Home and Community Care)

LONG-TERM CARE BED CONVERSION STUDY

A concurrent resolution directing the Legislative Council to monitor the implementation of the projects developed by the Department of Human Services related to the conversion of existing nursing facility or basic care capacity for use by the Alzheimer's and related dementia population and the testing of an expanded case management system for elderly persons and disabled persons.

WHEREAS, the Task Force on Long-Term Care Planning has declared that sufficient institutional capacity exists to meet the needs of the Alzheimer's and related dementia population; and

WHEREAS, the task force recommends that existing institutional service capacity be tailored to meet the needs of the Alzheimer's and related dementia population; and

WHEREAS, case management for older adults and persons with disabilities in the state is provided to a limited number of individuals through a variety of private and public agencies resulting in confusion for many individuals and their families who must work with a maze of different agencies located in several different locations in the community; and

WHEREAS, an expanded case management system would allow individuals in need of long-term care to access services through a single entry point that provides "one-stop" accessibility for those individuals and their families; and

WHEREAS, the Legislative Council, based upon a recommendation by the interim Budget Committee on Home and Community Care, has recommended to the Legislative Assembly the development of pilot projects by the Department of Human Services related to the conversion of existing bed capacity for use by the Alzheimer's and related dementia population and to the testing of an expanded case management system;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council monitor the implementation of the projects developed by the Department of Human Services related to the conversion of existing nursing facility or basic care capacity for use by the Alzheimer's and related dementia population and the implementation of an expanded case management system for elderly persons and disabled persons; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed February 7, 1997

CHAPTER 579**HOUSE CONCURRENT RESOLUTION NO. 3004**

(Legislative Council)

(Budget Committee on Home and Community Care)

ELDERLY AND DISABLED SERVICES STUDY

A concurrent resolution directing the Legislative Council to study the means of expanding home and community-based service availability, options for training additional qualified service providers, adequacy of geropsychiatric services, and the feasibility of combining service reimbursement payment sources to allow payments to flow to a broadened array of elderly and disabled services options.

WHEREAS, during the 1995-96 interim the Department of Human Services and the Department of Health formed a Task Force on Long-Term Care Planning and presented recommendations to the Legislative Council's Budget Committee on Home and Community Care and the Insurance and Health Care Committee; and

WHEREAS, in the area of long-term care service inventory, distribution, and alternatives, the Budget Committee on Home and Community Care recommended statutory changes relating to the moratorium on long-term care beds and allowing pilot projects for the conversion of existing long-term care beds for use by the Alzheimer's and related dementia population; and

WHEREAS, the availability of qualified service providers in rural areas may be limited, potential providers may lack the skills necessary to meet required competency standards, and training opportunities are limited, which may require the rural elderly and disabled to choose between relocating to access services or going without necessary services; and

WHEREAS, expanded training of qualified service providers could enhance the availability and improve the quality of home and community-based services; and

WHEREAS, the State Hospital is reviewing the adequacy of geropsychiatric care and developing a plan to provide outreach support for nursing homes in need of intervention services for this special population and the State Hospital may need to provide inpatient geropsychiatric care; and

WHEREAS, a combining of service reimbursement payment sources could provide increased flexibility or portability of service payments to allow payments to flow to a broadened array of service options for the elderly and disabled;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the means of expanding elderly and disabled service availability, options for training additional qualified service providers, adequacy of geropsychiatric services, and the feasibility of combining service reimbursement payment sources to allow payments to flow to a broadened array of elderly and disabled services options; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed February 7, 1997

CHAPTER 580**HOUSE CONCURRENT RESOLUTION NO. 3005**

(Legislative Council)
(Budget Committee on Home and Community Care)

NATIVE AMERICAN LONG-TERM CARE STUDY

A concurrent resolution directing the Legislative Council to study Native American long-term care needs and access to appropriate services and the functional relationship between state service units and the Native American reservation service systems.

WHEREAS, during the 1995-96 interim the Department of Human Services and the Department of Health formed a Task Force on Long-Term Care Planning and presented recommendations to the Legislative Council's Budget Committee on Home and Community Care and Insurance and Health Care Committee; and

WHEREAS, in the area of long-term care service inventory, distribution, and alternatives, it was reported long-term care services within North Dakota Native American service areas and reservations vary widely, ranging from a nontribe owned and operated nursing facility to unlicensed facilities and home-based care provided under several entitlement programs; and

WHEREAS, coordination and application of various Native American long-term care programs and service components are directed by tribal policy and organizational structure; and

WHEREAS, some states, including the state of Washington, have specially targeted service programs for residents of reservations and case management has been employed to coordinate the care arrangement and delivery; and

WHEREAS, various noninstitutional care components appear to be available on reservations, but service arrangement and delivery may not be adequately coordinated and case management services for elderly reservation residents, if available, could result in a significant increase in the effectiveness of service delivery for that population;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study Native American long-term care and case management needs and access to appropriate services and the functional relationship between state service units and the Native American reservation service systems; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed February 7, 1997

CHAPTER 581**HOUSE CONCURRENT RESOLUTION NO. 3006**

(Legislative Council)

(Budget Committee on Home and Community Care)

LONG-TERM CARE FINANCING STUDY

A concurrent resolution directing the Legislative Council to study long-term care financing issues to determine the changes necessary to develop alternative services and the feasibility of a managed care system for long-term care services.

WHEREAS, during the 1995-96 interim the Department of Human Services and the Department of Health formed a Task Force on Long-Term Care Planning and presented recommendations to the Legislative Council's Budget Committee on Home and Community Care and the Insurance and Health Care Committee regarding long-term care financing; and

WHEREAS, the Budget Committee on Home and Community Care supports the long-range goals of reducing the number of long-term care beds in North Dakota and of providing incentives to deliver alternative home and community-based services; and

WHEREAS, the current long-term care payment system should be reviewed to determine if some categories of nursing home residents could receive services in alternative, less costly settings; and

WHEREAS, a managed care program for long-term care services could result in the development of alternative care in a cost-efficient manner; and

WHEREAS, financial, regulatory, and other impediments may exist that prevent the development of alternative services to long-term care;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study nursing facility and other residential care systems to determine the changes necessary to assist in the development of alternative services, the financial incentives necessary to encourage nursing facilities to reduce the number of beds and to develop alternative services, if some categories of long-term care residents could receive services in alternative, less costly settings and any related cost savings, and the feasibility of a managed care system for long-term care services; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 3, 1997

CHAPTER 582**HOUSE CONCURRENT RESOLUTION NO. 3007**

(Appropriations Committee)

BLOCK GRANT HEARINGS

A concurrent resolution regarding the approval of state agency use of block grant funds and authorizing the Budget Section of the Legislative Council to hold the required legislative hearings on state plans for the receipt and expenditure of new or revised block grants as passed by Congress.

WHEREAS, the Congress of the United States enacted the Omnibus Budget Reconciliation Act of 1981 on July 29, 1981, thus creating several categories of "block" grant programs; and

WHEREAS, legislatures of the states are required to conduct public hearings; and

WHEREAS, the public hearing requirements for block grant moneys expected for the next biennium by the Office of Management and Budget have been met by the Appropriations Committees; and

WHEREAS, the Fifty-fifth Legislative Assembly cannot hold public hearings on revisions to current block grants or additional block grants that may be approved by Congress after the recess or adjournment of the Legislative Assembly; and

WHEREAS, the Legislative Assembly will not meet in regular session during 1998 and thus its public hearing responsibility for grants not approved by the Fifty-fifth Legislative Assembly must be delegated to a legislative entity;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the appropriation bill for the Office of Management and Budget, as it is passed by this Legislative Assembly, is the Legislative Assembly's approval and contains directions on the use of block grant moneys for the period ending September 30, 1999; and

BE IT FURTHER RESOLVED, that the Budget Section of the Legislative Council may hold the public legislative hearings required for the receipt of block grant or other federal moneys under the Omnibus Budget Reconciliation Act of 1981 or other relevant federal statutes; and

BE IT FURTHER RESOLVED, that the Budget Section authority granted by this resolution is in effect during the period from the recess or adjournment of the Fifty-fifth Legislative Assembly through September 30, 1999, and the Budget Section shall utilize the methods and procedures for holding the hearings authorized by this resolution and giving notice of those hearings as it deems appropriate.

Filed February 7, 1997

CHAPTER 583**HOUSE CONCURRENT RESOLUTION NO. 3008**

(Representative Sveen)

EMERGENCY MEDICAL SERVICES STUDY

A concurrent resolution directing the Legislative Council to study the emergency medical services system to ensure the continued viability of this state's rural emergency medical services.

WHEREAS, it is a legislative responsibility to review existing laws to ensure that they address the problems they are intended to rectify; and

WHEREAS, North Dakota Century Code Section 23-27-04.3 directs the State Health Council to adopt rules prescribing minimum training, testing, and certification standards for prehospital emergency medical services personnel; and

WHEREAS, the Department of Health has adopted emergency medical services personnel training, testing, and certification rules as North Dakota Administrative Code Chapter 33-36-01; and

WHEREAS, rural communities in the state rely on volunteers to fulfill prehospital emergency medical services needs; and

WHEREAS, many rural communities are experiencing difficulties in recruiting prehospital emergency medical services personnel who meet the requirements of the rules adopted by the State Health Council;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the emergency medical services system to ensure the continued viability of this state's rural emergency medical services; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 4, 1997

CHAPTER 584**HOUSE CONCURRENT RESOLUTION NO. 3012**
(Representatives Skarphol, Rennerfeldt, Torgerson, Byerly)
(Senator Andrist)**ROBERT W. PETERSON COMMENDED**

A concurrent resolution commending Robert W. Peterson on 30 years of service to the State of North Dakota.

WHEREAS, Robert W. Peterson was a member of the House of Representatives for six years and was State Auditor for 24 consecutive years; and

WHEREAS, Robert W. Peterson has received national recognition as a member of the National Association of State Auditors, Treasurers, and Comptrollers; the National Association of State Auditors; the Mountain and Plains Audit Forum; the National Auditor Training Committee; the Institute of Internal Auditors; and the Advisory Committee to the Secretary of the Interior; and

WHEREAS, Robert W. Peterson has served his profession and community well, having served on the Northern Lights Boy Scout Council, the Rotary District Council of Governors, the North Dakota Consensus Council, Inc., and the Evangelical Lutheran Church in America Western North Dakota Synod Council; and

WHEREAS, citizens of the State of North Dakota are indebted to Robert W. Peterson for his 30 years of dedication and professionalism;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-fifth Legislative Assembly commends Robert W. Peterson upon the achievement of 30 years of dedicated service to the State of North Dakota; and

BE IT FURTHER RESOLVED, that the Secretary of State present an enrolled copy of this resolution to Robert W. Peterson.

Filed April 1, 1997

CHAPTER 585**HOUSE CONCURRENT RESOLUTION NO. 3014**

(Representatives Martin, Wentz, Jensen)
(Senators Robinson, St. Aubyn)

**PARENTAL CUSTODY RELINQUISHMENT
EXCEPTION URGED**

A concurrent resolution urging Congress to enact legislation to allow an exception to the requirement that parents relinquish custody in order to receive out-of-home treatment services for children with serious emotional disorders.

WHEREAS, parents of children with serious emotional disorders often require access to public funds in order to obtain out-of-home mental health treatment services for their children with serious emotional disorders; and

WHEREAS, the primary source of federal funding for out-of-home services for children is under the federal foster care program; and

WHEREAS, the Adoption Assistance Child Welfare Act of 1980 [Pub. L. 96-272], providing for the federal foster care program, requires that in order to receive foster care maintenance payments, the child must be removed from the home as a result of a judicial determination, the child's placement and care must be the responsibility of a state agency or other public agency, and the child must be placed in a foster home or a child care institution; and

WHEREAS, in order to obtain funds for out-of-home mental health services for their children, many parents relinquish custody in order to have their children receive the needed services under the foster care program; and

WHEREAS, after custody is relinquished, parents have minimal involvement in decisions made by the public agencies which affect their children;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-fifth Legislative Assembly urges the Congress of the United States to consider changes to the federal foster care program to allow an exception to the requirement that parents relinquish custody in order to receive out-of-home treatment services for children with serious emotional disorders; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to each member of the North Dakota Congressional Delegation.

Filed March 6, 1997

CHAPTER 586**HOUSE CONCURRENT RESOLUTION NO. 3015**

(Representatives Drovdal, Kempenich, Warner)
(Senator Bowman)

FOUR BEARS BRIDGE FUNDING URGED

A concurrent resolution urging Congress to provide funds to replace the Four Bears Bridge.

WHEREAS, in 1944 Congress enacted the Flood Control Act of 1944 [the Pick-Sloan Act], which authorized the construction of various dams on the Missouri River, including the Garrison Dam project, for the benefit of citizens of many states for the provision of inexpensive electricity, flood control, water supply, and recreational opportunities; and

WHEREAS, as a result of the Garrison Dam, Lake Sakakawea was created on the Missouri River which caused areas of North Dakota and the Fort Berthold Indian Reservation which were previously closely connected by land to be separated by long expanses of water; and

WHEREAS, a vital link in North Dakota's system of highways are bridges crossing the Missouri River, including the Four Bears Bridge constructed in 1952 by the United States Army Corps of Engineers, located near the city of New Town on State Highway 23 connecting United States Highways 83 and 85 and traveling through the Fort Berthold Indian Reservation; and

WHEREAS, the Four Bears Bridge is the only bridge across the Missouri River for 190 miles of the river with the next two closest crossings being a bridge 90 highway miles to the north and Garrison Dam 100 highway miles to the south; and

WHEREAS, the Four Bears Bridge provides a vital link for the entire state as well as many rural communities in northwest North Dakota, including access links to businesses, farms, schools, and other educational facilities, health facilities, government offices, and ambulance, police, and fire protection services which are integral to the health, safety, and well-being of the citizens living in this area; and

WHEREAS, at the time of the completion of the Four Bears Bridge by the Corps of Engineers, it was obsolete based on the bridge construction standards of that time, and presently is even more hazardous because of the narrow width of its driving surface; and

WHEREAS, the North Dakota Department of Transportation is required to maintain and repair the Four Bears Bridge and will be required to spend at least \$8,000,000 in major renovation and repairs to keep it in a safe and usable condition for the foreseeable future if the bridge is not replaced; and

WHEREAS, the North Dakota Department of Transportation has determined that instead of costly repair and maintenance of an already obsolete bridge, the bridge should be replaced at an estimated cost of \$42,000,000; and

WHEREAS, the State of North Dakota has examined the many funding options but simply does not have adequate funds to either provide major maintenance for the bridge or to construct a new bridge without jeopardizing the maintenance needs and safety of other bridges in North Dakota;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-fifth Legislative Assembly urges the Congress of the United States to take whatever actions and make available appropriate funds as are necessary to replace the Four Bears Bridge in recognition of the continued federal responsibility for the Garrison Dam project; and

BE IT FURTHER RESOLVED, that the Fifty-fifth Legislative Assembly also requests the assistance and advocacy of all federal agencies responsible for or having an interest in the construction, maintenance, and replacement of the Four Bears Bridge to take all action necessary to solve the urgent problem of the replacement of the Four Bears Bridge.

Filed April 1, 1997

CHAPTER 587**HOUSE CONCURRENT RESOLUTION NO. 3017**

(Representatives Belter, Grande)
(Senator Christmann)

**BALANCED BUDGET CONSTITUTIONAL
AMENDMENT URGED**

A concurrent resolution urging the Congress of the United States to consider an amendment to the United States Constitution to require a balanced federal budget.

WHEREAS, the national debt of the United States is over \$5,000,000,000,000 and the estimated share of the debt for each United States citizen is approximately \$20,000; and

WHEREAS, the national debt is increasing an average of over \$700,000,000 each day; and

WHEREAS, the accumulated debt of the United States represents a significant financial burden for future generations;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-fifth Legislative Assembly urges the Congress of the United States to consider an amendment to the United States Constitution to require a balanced federal budget; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the members of the North Dakota Congressional Delegation and to the chairman of the United States Senate and House of Representatives Committees on Judiciary.

Filed March 19, 1997

CHAPTER 588**HOUSE CONCURRENT RESOLUTION NO. 3018**

(Representatives Kempenich, Byerly, Drovdal)
(Senator Bowman)

HIGHWAY 85 WALKWAY FUNDING URGED

A concurrent resolution urging Congress to provide funds to widen and provide an attached walkway to the bridge over the Burlington Northern tracks on United States Highway 85 north of Bowman, North Dakota.

WHEREAS, United States Highway 85 is the International Can-Am Highway; and

WHEREAS, this highway is regularly used by the oil and agriculture industries; and

WHEREAS, the three-span steel girder bridge on United States Highway 85 over the railroad tracks north of Bowman was constructed in 1939, is 166 feet in length, and is only 24 feet wide from curb to curb; and

WHEREAS, the traffic over the bridge was approximately 1,000 vehicles per day in 1989 and has increased to approximately 1,125 vehicles per day in 1995; and

WHEREAS, expanding the clear deck width curb to curb to 32 feet by using the pedestrian sidewalk that is on the east side of the bridge would increase the safety for the motoring public; and

WHEREAS, a separate walkway attached to the bridge would provide a safe path for children to attend school and recreational activities;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-fifth Legislative Assembly urges the Congress of the United States to provide funds to widen and provide an attached walkway to the bridge over the Burlington Northern tracks on United States Highway 85 north of Bowman, North Dakota; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Secretary of the Department of Transportation and to each member of the North Dakota Congressional Delegation.

Filed March 19, 1997

CHAPTER 589**HOUSE CONCURRENT RESOLUTION NO. 3019**

(Representatives Poolman, Dorso)

REPUBLIC OF CHINA RELATIONSHIP RECOGNIZED

A concurrent resolution recognizing North Dakota's commercial relationship with the people of the Republic of China on Taiwan and the record of the Republic of China concerning democratization at home and humanitarian service abroad.

WHEREAS, the people of this state enjoy a relationship with the province of Taiwan, Republic of China; and

WHEREAS, this state has benefited from growing commercial interaction with the Republic of China on Taiwan; and

WHEREAS, a democratic multiparty political system has been smoothly established by the Republic of China on Taiwan; and

WHEREAS, the role of the Republic of China on Taiwan in international development programs and humanitarian relief operations has expanded significantly during the past decade; and

WHEREAS, based on the principle of universality and in accordance with the established pattern of parallel representation by divided countries in the United Nations, 15 countries have proposed to the Secretary General of the United Nations that a supplemental item be included in the provisional agenda of the 50th General Assembly session of the United Nations to consider the exceptional situation of the Republic of China on Taiwan in the international community;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That North Dakota's commercial relationship with the people of the Republic of China on Taiwan and the record of the Republic of China concerning democratization at home, and humanitarian service abroad be accorded appropriate recognition by the people of this state; and

BE IT FURTHER RESOLVED, that due consideration should be given by the United States to the readiness of the Republic of China on Taiwan to further contribute to and participate broadly in the international community; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Governor, each member of the North Dakota Congressional Delegation, the United States Trade Representative, and the North Dakota International Trade program director.

Filed April 2, 1997

CHAPTER 590**HOUSE CONCURRENT RESOLUTION NO. 3020**

(Representatives Kempenich, Nelson, Weisz)
(Senators Christmann, Fischer, Robinson)

AIRLINE SERVICE STUDY

A concurrent resolution directing the Legislative Council to study airline service in this state.

WHEREAS, adequate interstate and international air service is critical to the economic future of this state; and

WHEREAS, the present system of sometimes having only one airline carrier removes the competitive forces that keep ticket prices low and the level of service high; and

WHEREAS, the present airfare structure and scheduling of arrivals and departures place North Dakota citizens and businesses at a comparative economic disadvantage to businesses in other states; and

WHEREAS, attraction and retention of major air carriers has been a persistent and reoccurring problem;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the airfare service in this state; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly; and

BE IT FURTHER RESOLVED, that the Legislative Council provide a copy of its findings and recommendations to the Secretary of the Department of Transportation and to each member of the North Dakota Congressional Delegation.

Filed March 19, 1997

CHAPTER 591**HOUSE CONCURRENT RESOLUTION NO. 3025**

(Representatives Skarphol, Dorso, Carlson, Wald)
(Senators G. Nelson, Grindberg)

**UNEMPLOYMENT COMPENSATION DEVOLVEMENT
URGED**

A concurrent resolution urging Congress to take steps to devolve the unemployment compensation program back to the states.

WHEREAS, the unemployment compensation system was created with the dual goals of helping to reduce economic hardship for unemployed workers and stabilizing the economy during recessions; and

WHEREAS, to accomplish these goals, the unemployment compensation system consists of unemployment insurance and a system of Job Service offices; and

WHEREAS, the unemployment compensation system is funded by a two-tiered system of taxation with a state payroll tax averaging about .9 percent of total wages and a federal payroll tax known as the Federal Unemployment Tax Act tax that is .6 percent of the first \$7,000 of wages, with a surtax of .2 percent; and

WHEREAS, the surtax was first implemented in 1977 to restore solvency and integrity to the unemployment compensation system; and

WHEREAS, Congress has extended the surtax four times since 1987 despite the fact the unemployment compensation system has generated large surpluses each year; and

WHEREAS, the surtax alone generated approximately \$1,400,000,000 in 1995 and is due to expire in 1998; and

WHEREAS, Congress and the administration have shown signs of making the temporary surtax indefinite; and

WHEREAS, the administration has budgeted to extend the surtax at least through the year 2006; and

WHEREAS, the Congressional Budget Office has estimated if the .2 percent surtax is eliminated, the savings to business would stimulate added job growth, resulting in increased tax revenues of almost \$900,000,000 between 1996 and 2000; and

WHEREAS, of the payroll tax revenue collected through the unemployment compensation system and maintained by the federal government, the federal government maintains 53 separate accounts for state payroll taxes and three separate accounts for Federal Unemployment Tax Act taxes; and

WHEREAS, 80 percent of the tax is supposed to be returned to the states to administer the unemployment compensation program and 20 percent is dedicated to the extended benefits account designed to provide long-term benefits in case of

severe economic hardships, and once these accounts reach their statutory ceiling the money is placed into the loan account for loans to state unemployment compensation systems in financial trouble; and

WHEREAS, the accounts maintained by the federal government have accumulated large surpluses that are being used to offset the federal deficit rather than return unemployed workers to work; and

WHEREAS, at the end of fiscal year 1995, state accounts had balances totaling \$35,900,000,000 and the three federal accounts had balances totaling \$11,900,000,000; and

WHEREAS, states only receive an average of 60 percent of the money from the federal government that is supposed to be dedicated to funding the administration of the unemployment compensation system and the other 40 percent is consumed by federal activities including demonstration programs and federal bureaucracy; and

WHEREAS, filing reports complying with the unemployment compensation system's dual taxation system costs employers almost \$500,000,000 a year; and

WHEREAS, if states were allowed to fully administer their own unemployment compensation systems, duration of unemployment could be decreased, payroll taxes could be decreased, and employment could be significantly increased;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-fifth Legislative Assembly urges the Congress of the United States to take steps to devolve the unemployment compensation program back to the states in order to maintain integrity in the system and accomplish the goals the unemployment compensation system was designed to achieve; and

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to each member of Congress.

Filed April 1, 1997

CHAPTER 592**HOUSE CONCURRENT RESOLUTION NO. 3026**

(Representatives Kempenich, Drovdal, Poolman)
(Senators Grindberg, Holmberg)

DE MORES ABATTOIR PROJECT SUPPORT

A concurrent resolution supporting the de Mores Abattoir Project, the Center for the American West, located in Chimney Park in Medora, North Dakota.

WHEREAS, Medora has developed into a major asset and tourist attraction for North Dakota; and

WHEREAS, the de Mores Abattoir Project will increase the tourism industry and further economic development in North Dakota; and

WHEREAS, the Theodore Roosevelt Medora Foundation has agreed to raise funds for the cost of the project; and

WHEREAS, the property owned by the state of North Dakota will include retail shops, a giant screen theater, museums, and the Chateau Interpretive Center, resulting in an ongoing investment return to the state;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-fifth Legislative Assembly supports the de Mores Abattoir Project, the Center for the American West, located in Chimney Park in Medora, North Dakota.

Filed April 2, 1997

CHAPTER 593**HOUSE CONCURRENT RESOLUTION NO. 3028**

(Representatives Kempenich, Axtman, Klein)
(Senator Naaden)

COMMERCE DEPARTMENT STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of establishing a state department of commerce.

WHEREAS, numerous state agencies and officials, including the Public Service Commission, the Secretary of State, the Labor Commissioner, occupational and professional licensing boards, and the Department of Economic Development and Finance, are responsible for licensing functions and economic development functions in the state; and

WHEREAS, the consolidation of various licensing, regulatory, and economic development functions into one agency may be beneficial with respect to promoting economic development activities and allowing individuals and businesses to access licensing, regulatory, and economic development information through one agency; and

WHEREAS, a comprehensive study of establishing a state department of commerce is needed to determine its feasibility and desirability, and if feasible and desirable, to determine whether such a department should be under the authority of an elected or appointed official and to determine the proper structure and administration of such a department;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of establishing a state department of commerce; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 19, 1997

CHAPTER 594**HOUSE CONCURRENT RESOLUTION NO. 3029**

(Representatives Coats, Christenson, Gorder, Sveen)
(Senators Cook, Robinson)

VETERANS' BRAVERY ACKNOWLEDGED

A concurrent resolution acknowledging the service and sacrifice of the brave Americans, including North Dakotans, who contributed to the historic victory of freedom and democracy over tyranny and oppression.

WHEREAS, the United States was beset with the threat of attack and war from the former Soviet Union virtually from the day that World War II ended in Europe; and

WHEREAS, this constant threat required the United States to maintain a strong military presence around the world for over 45 years; and

WHEREAS, hundreds of thousands of America's men and women, including thousands of North Dakotans, answered the need by serving in the military, many of them as draftees, because of the former Soviet Union's threat that they would "bury" us; and

WHEREAS, this constant vigil led to the downfall of the Soviet Union, without a nuclear holocaust, in August 1991, and the rebirth of several democratic states within the former Union of Soviet Socialist Republics; and

WHEREAS, proper recognition has never been given these brave service persons who maintained the military presence of the United States around the world;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Assembly acknowledge the service and sacrifice of the brave Americans, including North Dakotans who contributed to the historic victory of freedom and democracy over tyranny and oppression; and

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the adjutant of the North Dakota departments of the American Legion; the AMVETS - American Veterans of World War II, Korea, and Vietnam; the Disabled American Veterans; the Ex-POW Association; the International War Veterans Alliance; and the Veterans of Foreign Wars.

Filed March 19, 1997

CHAPTER 595**HOUSE CONCURRENT RESOLUTION NO. 3030**

(Representatives Svedjan, Stenehjem, R. Kelsch, Glassheim, Price)

PUBLIC HEALTH PLANNING STUDY

A concurrent resolution directing the Legislative Council to study the development of a strategic planning process for the future of public health in this state.

WHEREAS, the well-being of the residents of this state relies on a strong, effective, and efficient health care system; and

WHEREAS, health care costs are a concern of the Legislative Assembly and the residents of this state; and

WHEREAS, public health has played a significant role in the improvement of the health status of North Dakotans; and

WHEREAS, it is necessary to transform and strengthen public health in order to respond to the challenges of the 21st century; and

WHEREAS, the Governor of this state has encouraged strategic planning for the future of public health in this state; and

WHEREAS, this strategic plan should include local public health departments, health care providers, academic institutions, and the public in order to construct a coordinated approach for promoting long-term health and wellness in the residents of this state;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the development of a strategic planning process for the future of public health in this state, and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 18, 1997

CHAPTER 596**HOUSE CONCURRENT RESOLUTION NO. 3031**

(Representatives Drovdal, Delmore, Kempenich)
(Senators Krauter, Urlacher)

CHILD SUPPORT STUDY

A concurrent resolution directing the Legislative Council to study the issues of fairness and equity as they relate to child support guidelines and the issuance and enforcement of child custody and visitation orders.

WHEREAS, approximately 70 percent of the caseload of North Dakota courts involves issues related to family law, including divorce, custody, visitation, and child support as well as modifications to custody, visitation, and child support orders; and

WHEREAS, every child has a right to be guided, nurtured, and supported emotionally, physically, and financially by both parents regardless of the parents' marital status; and

WHEREAS, North Dakota law provides that for the purposes of determining custody, there is no presumption as to which parent will better promote the best interests of the child; and

WHEREAS, North Dakota law provides that each parent has a mutual duty to support a child of the parents; and

WHEREAS, concerns have been expressed that there are inequities in the enforcement of child custody and visitation orders and in the child support guidelines as they relate to persons who are obligors;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the issues of fairness and equity as they relate to child support guidelines and the issuance and enforcement of child custody and visitation orders; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 28, 1997

CHAPTER 597**HOUSE CONCURRENT RESOLUTION NO. 3032**

(Representatives Maragos, Svedjan, Price)
(Senators Kelsh, Nalewaja)

SOCIAL SERVICES STUDY

A concurrent resolution directing the Legislative Council to study the responsibilities of county social services as they are distinguished from the responsibilities of regional human service centers and the Department of Human Services when providing services to children and their families and persons with disabilities, including the elderly.

WHEREAS, North Dakota Century Code Chapter 50-06 establishes the Department of Human Services and its various components as the agency responsible for administering programs for children and families, persons with developmental disabilities, crippled children, aging services, mental health services, and alcohol and drug services; and

WHEREAS, Section 50-06-05.18 directs the Department of Human Services to direct and supervise county social service board activities as may be financed with funds distributed by the department; and

WHEREAS, Section 50-06-05 directs the Department of Human Services to carry out various human service programs and regulatory functions which the department has delegated to county social service agencies; and

WHEREAS, each program or function delegated to county agencies has a unique method for assuring compliance with the department's wishes; and

WHEREAS, the role of county government in this delivery system is often open to administrative interpretation and may vary from region to region and county to county; and

WHEREAS, during the 1995-96 interim the Legislative Council's Budget Committee on Human Services undertook a similar study of economic assistance programs which has led to proposals for significant changes in these programs; and

WHEREAS, the 1995-96 interim Budget Committee on Human Services had intended to include social services provided to children and families and persons with disabilities, including the elderly, but was unable to complete the work within the time available;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the responsibilities of county social services as they are distinguished from the responsibilities of regional human service centers and the Department of Human Services when providing services to children and their families and person with disabilities, including the elderly; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 18, 1997

CHAPTER 598**HOUSE CONCURRENT RESOLUTION NO. 3033**

(Representatives Callahan, Sveen, Price, Warner)
(Senator DeMers)

MANAGED HEALTH CARE STUDY

A concurrent resolution directing the Legislative Council to study the effects of managed health care on the future viability of the health care delivery system in rural North Dakota.

WHEREAS, the health care delivery system in rural North Dakota has been under increasing economic pressure for several years; and

WHEREAS, the system of health care financing is undergoing fundamental changes that may further adversely affect rural health care providers; and

WHEREAS, many rural areas have had a longstanding difficulty in recruiting and retaining health care personnel; and

WHEREAS, the continued viability of the health care delivery system in rural North Dakota is a necessary condition for economic development;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the effects of managed health care on the future viability of the health care delivery system in rural North Dakota; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 18, 1997

CHAPTER 599**HOUSE CONCURRENT RESOLUTION NO. 3034**

(Representatives Sandvig, Weisz, Callahan)
(Senators Krauter, Nalewaja, Thane)

DIVORCE IMPACT ON CHILDREN STUDY

A concurrent resolution directing the Legislative Council to study the impact of divorce on children and issues of equity and fairness as they relate to custody determinations, visitation orders, and child support obligations.

WHEREAS, 65 percent of the 1.2 million divorces in 1995 in the United States involved couples with minor children; and

WHEREAS, children of divorced parents are more likely to drop out of school, to have out-of-wedlock births, and to get divorced themselves than children from intact families; and

WHEREAS, a child has a right to be supported emotionally, physically, and financially by both parents regardless of the parents' marital status; and

WHEREAS, frequent and continuing access by a child to both parents after the divorce should be encouraged; and

WHEREAS, concerns have been expressed that there are inequities in the enforcement of visitation orders for noncustodial parents and in the child support guidelines as they relate to parents who are obligors;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the impact of divorce on children and issues of equity and fairness as they relate to custody determinations, visitation orders, and child support obligations; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed April 2, 1997

CHAPTER 600**HOUSE CONCURRENT RESOLUTION NO. 3035**

(Representatives Grande, Christenson)

TEACHER PROFESSIONAL PRACTICES STUDY

A concurrent resolution directing the Legislative Council to study the criteria and the manner in which the criteria is applied by the Education Standards and Practices Board in certifying teachers, in approving teacher preparation programs, and in developing a professional code of ethics, conduct, and performance.

WHEREAS, the Education Standards and Practices Board is charged, by statute, with determining the criteria for and supervising the certification of teachers; and

WHEREAS, the Education Standards and Practices Board is charged, by statute, with setting standards for and approving teacher preparation programs; and

WHEREAS, the Education Standards and Practices Board is charged, by statute, with developing and revising professional codes or standards relating to the ethics, conduct, and performance of teachers; and

WHEREAS, the Education Standards and Practices Board is charged, by statute, with providing recommendations for teacher inservice education; and

WHEREAS, the citizens of this state have a vested interest in ensuring that our teachers are well educated and well prepared for the challenges of the classroom, that the background of persons seeking to be certified and currently serving as certified teachers in this state are thoroughly examined, and that our certification standards are equitably applied to all persons who wish to teach in this state;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the criteria and the manner in which the criteria is applied by the Education Standards and Practices Board in certifying teachers, in approving teacher preparation programs, and in developing a professional code of ethics, conduct, and performance; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 19, 1997

CHAPTER 601**HOUSE CONCURRENT RESOLUTION NO. 3036**

(Representatives Drovdal, Carlson)
(Senators Mathern, W. Stenehjem, Redlin)

LELAND STENEHJEM, JR., COMMENDED

A concurrent resolution commending Leland Stenehjem, Jr., upon his election as President of the Independent Bankers Association of America.

WHEREAS, Leland Stenehjem, Jr., was elected last March and is now serving as President of the Independent Bankers Association of America, a national banking association made up of over 3,000 member banks serving the communities where independent community banks operate throughout the country; and

WHEREAS, Leland Stenehjem, Jr., joined his late father, Leland Stenehjem, Sr., his mother Judy Stenehjem, and his brother, Steven Stenehjem, in a family banking business which was started as the Farmers State Bank in Arnegard, North Dakota, in 1910 by his grandfather and which was moved to Watford City in the 1930s and renamed First International Bank and Trust, and was the only bank in the county that survived the depression, of which brother Steven Stenehjem is now president; and

WHEREAS, Leland Stenehjem, Jr., has been serving as President of First International Bank & Trust of Fargo, and was recently named Banker of the Year for 1997 by the Northwestern Financial Review, a seven-state weekly banking publication; and

WHEREAS, Leland Stenehjem, Jr., has joined his family in bringing the commitment of community banking services to families and businesses in all parts of North Dakota and recently to Arizona; and

WHEREAS, Leland Stenehjem, Jr., had prepared himself for his present leadership duties by serving in the United States Army as a military aide at the White House, as Banking Commissioner of North Dakota from 1981 to 1983, as Director of the Office of Management and Budget from 1983 to 1985, and has brought the North Dakota spirit of dedication, service, and goodwill to all parts of the country in his travels as President of the association;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-fifth Legislative Assembly commends Leland Stenehjem, Jr., upon the achievement of being recognized nationally as a bank leader and as the 1997 Banker of the Year for this region; and

BE IT FURTHER RESOLVED, that the Secretary of State present an enrolled copy of this resolution to Leland Stenehjem, Jr.

Filed March 18, 1997

CHAPTER 602**HOUSE CONCURRENT RESOLUTION NO. 3037**

(Representatives Schmidt, Boucher, Gulleson, D. Johnson)

(Senators Kringstad, Urlacher)

PROPERTY TAX RELIEF STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of providing property tax relief through alternative state and local revenue sources.

WHEREAS, it is a commonly heard observation of citizens of the state that property tax burdens have increased substantially in recent years; and

WHEREAS, it is essential that the Legislative Assembly gather accurate information about the increase in property taxes in recent years relative to other taxes imposed in the state, funds allocated to political subdivisions by the state, and whether the property tax burden is equitably allocated; and

WHEREAS, analysis is required of the appropriate level of reliance to be placed on property tax revenues and whether it would benefit the citizens of the state to provide property tax relief through alternative state or local revenue sources, such as income taxes;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of providing property tax relief through alternative state and local revenue sources; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 18, 1997

CHAPTER 603**HOUSE CONCURRENT RESOLUTION NO. 3038**

(Representatives Delmore, Hawken, Nicholas)
(Senators St. Aubyn, W. Stenehjem, Watne)

MOBILE HOME TAXATION STUDY

A concurrent resolution directing the Legislative Council to study assessment and taxation of mobile homes, park model trailers, recreational vehicles, and similar housing alternatives.

WHEREAS, questions have been raised by citizens about the equity of assessment and taxation of mobile homes, park model trailers, recreational vehicles, and similar housing alternatives; and

WHEREAS, available information indicates a lack of uniformity in assessment of mobile homes, park model trailers, and similar housing alternatives; and

WHEREAS, recreational vehicles are generally not subject to ad valorem taxation but may be used for the same purposes as housing alternatives that are subject to ad valorem taxation; and

WHEREAS, changes in housing alternatives and their uses necessitate a thorough review of law and assessment practices to assure equitable tax treatment for owners of such property;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the assessment and taxation of mobile homes, park model trailers, recreational vehicles, and similar housing alternatives; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 18, 1997

CHAPTER 604**HOUSE CONCURRENT RESOLUTION NO. 3039**

(Representatives Brandenburg, Gulleon, Kroeplin, Nicholas)
(Senators Christmann, Wanzek)

INCOME TAX INCENTIVES STUDY

A concurrent resolution directing the Legislative Council to study the relationship between state general fund revenue gains from economic growth and losses from providing income tax incentives for investment in value-added agricultural processing.

WHEREAS, value-added agricultural processing holds great promise to add strength to North Dakota's economy and to benefit the state's agricultural producers; and

WHEREAS, the Fifty-fifth Legislative Assembly has disapproved legislation to provide income tax incentives for investments in value-added agricultural processing businesses primarily due to concerns about the loss of income tax revenues but with a lack of reliable information on potential revenue enhancements to be derived from economic development; and

WHEREAS, it is essential to understanding the full impact of incentives for investments in value-added agricultural processing to obtain detailed analysis of the potential benefits in increased future general fund revenues through stimulation of the state's economy by value-added agricultural processing and the information obtained could be used to structure legislation to offset anticipated revenue losses with anticipated revenue gains;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the relationship between state general fund revenue gains from economic growth and losses from providing income tax incentives for investment in value-added agricultural processing, with emphasis on developing legislation to offset anticipated revenue losses from investment incentives with anticipated revenue gains from economic growth; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 19, 1997

CHAPTER 605**HOUSE CONCURRENT RESOLUTION NO. 3040**

(Representatives Christenson, Grande)

TRUANCY STUDY

A concurrent resolution directing the Legislative Council to study the truancy laws of this state and whether there are sufficient options and alternatives available to schools and school districts that have high incidences of truancy.

WHEREAS, truant students often fail to understand how the educational system meets their needs; and

WHEREAS, truant students often fail to recognize that schools provide general education skills, vocational and life skills, and social skills, all of which are need to lead healthy, economically viable, and socially fulfilled lives; and

WHEREAS, truant students often fail to recognize that truancy may be a precursor to an early and permanent departure from high school; and

WHEREAS, there are more than 3.8 million 16- to 24-year-old high school dropouts in the United States; and

WHEREAS, the state has a compelling interest in ensuring that each child of school age attend school and be an active participant in the acquisition of an education;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the truancy laws of this state and whether there are sufficient options and alternatives available to schools and school districts that have high incidences of truancy; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 28, 1997

CHAPTER 606

HOUSE CONCURRENT RESOLUTION NO. 3042

(Representatives Jensen, Dorso, Boucher)
(Senator Nalewaja)

DEPARTMENT OF HUMAN SERVICES STUDY

A concurrent resolution directing the Legislative Council to study the department of human services.

WHEREAS, the 1981 Legislative Assembly created the Department of Human Services and consolidated the functions, powers, and duties of the Social Service Board, the Mental Health and Retardation Division of the Department of Health, the Division of Alcoholism and Drug Abuse of the Department of Health, and the State Council on Developmental Disabilities; and

WHEREAS, changes in federal funding, including block grants, provide the state an opportunity to change the human services delivery system; and

WHEREAS, the development of sophisticated computer systems and applications make information access easier and more efficient; and

WHEREAS, society has experienced significant changes since the consolidation and creation of the Department of Human Services, including an increase in youth-related problems, changes in family structure, changes in economic situations, a shift in population from rural to urban communities, and increases in prison populations; and

WHEREAS, in the area of medical services the state is experiencing increased costs, limited accessibility to services, the development of managed care options, and the deinstitutionalization of state institutions; and

WHEREAS, the combination of agencies was done to make more efficient the delivery of human services in North Dakota, to minimize the administrative costs of providing these services, and to eliminate the duplication of services; and

WHEREAS, the executive budget for the Department of Human Services for the 1997-99 biennium exceeds \$1.2 billion, of which \$342 million is from the state general fund, a complex budget providing funding for numerous organizational units making legislative analysis and oversight challenging;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the Department of Human Services, including the appropriateness of a consolidated Department of Human Services in light of significant federal funding, society, and technology changes and including the changes necessary to enhance program effectiveness, legislative understanding, appropriation analysis and development, and oversight of the Department of Human Services; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly; and

BE IT FURTHER RESOLVED, that the Legislative Council may contract with firms or individuals having expertise in areas related to this study, and that the Department of Human Services shall provide such assistance as the committee may request.

Filed March 28, 1997

CHAPTER 607**HOUSE CONCURRENT RESOLUTION NO. 3043**

(Representatives Wald, Carlson, Gerntholz, Keiser, Tollefson)

HAIL SUPPRESSION STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of implementing hail suppression programs for the reduction of property damage in urban and rural areas and funding the programs through property and casualty line insurance premium taxes.

WHEREAS, county-sponsored summertime cloud seeding operations to mitigate hail damage have been conducted in North Dakota since the 1960s; and

WHEREAS, evaluations show strong evidence of the benefits within cloud seeding target areas, including 45 percent reductions in crop hail damage and six percent increases in wheat production; and

WHEREAS, the technology developed through combined research and operational efforts in this state has been and continues to be successfully applied and developed by a native North Dakota company in numerous other projects elsewhere in other states, provinces, and countries; and

WHEREAS, the domestic property and casualty insurance industry of Alberta, Canada, has joined with a native North Dakota company in funding and implementing a five-year pilot program for the suppression of property and casualty hail damage within major metropolitan target areas, including the cities of Calgary and Red Deer; and

WHEREAS, the domestic property and casualty insurance industry of this state has suffered considerable hail losses in recent years attributable to urban hailstorms in Bismarck, Grand Forks, and Minot, and as a result some insurance companies are withdrawing from the North Dakota market; and

WHEREAS, if hail continues to strike larger urban areas, it is likely additional insurance companies will withdraw from the North Dakota market and premiums and deductibles will continue to increase;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility desirability of implementing hail suppression programs for the reduction of property damage in urban and rural areas and funding the programs through property and casualty line insurance premium taxes; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 28, 1997

CHAPTER 608**HOUSE CONCURRENT RESOLUTION NO. 3044**

(Representative Freier)
(Senator Freborg)

EXEMPT PROPERTY IMPACT ON SCHOOLS STUDY

A concurrent resolution directing the Legislative Council to study the impact of tax-exempt property on school districts.

WHEREAS, school districts of the state are the greatest beneficiaries of property tax revenues; and

WHEREAS, the amount of tax-exempt property within a school district has a direct impact on tax revenues available to the district, the tax burden on taxpayers in the district, and foundation aid allocations to the district; and

WHEREAS, property tax exemptions may be granted by the state, county, or city without approval by the school board of the district affected; and

WHEREAS, analysis is required of the impact of tax-exempt property on school districts and the feasibility and desirability of reducing that impact, and of methods of providing some form of benefit to school districts from tax-exempt property owners and providing school districts with a role in approval of property tax exemptions;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the impact of tax-exempt property on school districts; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 19, 1997

CHAPTER 609**HOUSE CONCURRENT RESOLUTION NO. 3045**

(Representatives Berg, Dorso)
(Senator G. Nelson)

PERFORMANCE REVIEW BUDGETING STUDY

A concurrent resolution directing the Legislative Council to study the current budget process, the results of the program performance-based budgeting pilot projects, and budget reforms in other states.

WHEREAS, our budgeting process is intended to identify the needs of the citizens of this state; and

WHEREAS, other states use budgeting methods that include performance reviews to evaluate proposed budgets; and

WHEREAS, the citizens of this state would benefit from implementation of a budgeting method that encourages and results in focusing agency direction while allowing financial flexibility in order to meet agency objectives;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the current budget process including its advantages and disadvantages; and

BE IT FURTHER RESOLVED, that the study review the results of the program performance-based budgeting pilot project and budgeting reforms in other states; and

BE IT FURTHER RESOLVED, that the study review how agency and institution appropriation balances at the end of a biennium should be handled; and

BE IT FURTHER RESOLVED, that the study determine the benefits that new information technology could provide in budget development and budget presentation; and

BE IT FURTHER RESOLVED, that the study include consideration of the effect of budget recommendations on future biennial budgets; and

BE IT FURTHER RESOLVED, that the study include a review of the detailed information supporting agency budget requests and the executive recommendation; and

BE IT FURTHER RESOLVED, that the study include a review of alternative budgeting methods that use performance reviews to evaluate proposed agency budgets; and

BE IT FURTHER RESOLVED, that the committee work closely with the Office of Management and Budget and the State Auditor; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed April 2, 1997

CHAPTER 610**HOUSE CONCURRENT RESOLUTION NO. 3046**

(Representatives Berg, Belter)

AFFORDABLE HOUSING STUDY

A concurrent resolution directing the Legislative Council to study the availability of affordable housing for middle income households, for the elderly, and in rural areas of this state.

WHEREAS, the 1995-96 interim Legislative Council study of funding to provide housing for low-income, homeless, or disabled families resulted only in a recommendation concerning zoning restrictions; and

WHEREAS, there is a need for home financing programs geared to provide assistance to individuals who do not qualify for either low-income programs or conventional financing; and

WHEREAS, there is a special demand for housing due to the increasing elderly population of this state; and

WHEREAS, some rural communities in this state are growing and are not able to meet the demand for housing; and

WHEREAS, the ability of rural communities to attract private home construction at an affordable price is hampered by the differential between the construction cost and the appraised value; and

WHEREAS, there are multiple agencies and organizations that provide housing and home financing, but there is no single agency to coordinate housing activities;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the availability of affordable housing for middle income households, for the elderly, and in rural areas of this state; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 26, 1997

CHAPTER 611**HOUSE CONCURRENT RESOLUTION NO. 3047**

(Representatives Torgerson, Drovdal, R. Kelsch)

SCHOOL ACCREDITATION STUDY

A concurrent resolution directing the Legislative Council to study the current standards for the accreditation of elementary and secondary schools in this state, the method by which accreditation standards are adopted, the fiscal impact of accreditation standards, and the feasibility and desirability of waiving standards if student performance levels exceed a designated score.

WHEREAS, the current standards for the accreditation of elementary and secondary schools in this state were issued by the Superintendent of Public Instruction in 1991; and

WHEREAS, in order to comply with certain provisions of the current standards for the accreditation of elementary and secondary schools in this state, school boards are often faced with having to expend funds that could be put to greater benefit for other purposes; and

WHEREAS, the expenditure requirements directly or indirectly imposed by certain provisions of the current state standards for the accreditation of elementary and secondary schools prevent school boards from setting priorities and accomplishing the goals deemed important to their school districts; and

WHEREAS, the current state standards for the accreditation of elementary and secondary schools do not include any mechanisms for measuring the effect of the standards on academic achievement or performance; and

WHEREAS, the current state standards for the accreditation of elementary and secondary schools have not been revised since 1991;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the current standards for the accreditation of elementary and secondary schools in this state, the method by which accreditation standards are adopted, the fiscal impact of accreditation standards, and the feasibility and desirability of waiving standards if student performance levels exceed a designated score; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 28, 1997

CHAPTER 612

HOUSE CONCURRENT RESOLUTION NO. 3049

(Representatives Kretschmar, Dorso, Oban)

LEGISLATIVE PROCESS STUDY

A concurrent resolution directing the Legislative Council to study additional improvements to the legislative process that ensure an accessible, productive citizen legislature.

WHEREAS, the citizen legislator tradition in North Dakota should be preserved and legislative productivity and citizen access should be enhanced to deal with the increasing number and complexity of issues facing the state; and

WHEREAS, the critical public issues in the future may strain the capacity of a citizen legislature, particularly the return of responsibilities from the federal government to the state and the return of responsibilities from the executive branch to the legislative branch of state government; and

WHEREAS, it is important to build upon the past commitment to the strength of the legislative institution and to ensure that the Legislative Assembly continues as a strong, effective institution that commands wide public respect and confidence; and

WHEREAS, the 1995-1996 interim Legislative Management Committee continued its leadership in the work of significant improvement in the processes of the Legislative Assembly, including development of technological tools for enhancing legislative productivity, independence, and citizen access, and articulation of principles of legislative ethical behavior; and

WHEREAS, continued discussion among legislators, former legislators, and other citizens may be beneficial to identify the future roles, responsibilities, and steps to strengthen the legislative institution in the state;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study additional improvements to the legislative process that ensure an accessible, productive citizen legislature; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed April 1, 1997

CHAPTER 613**HOUSE CONCURRENT RESOLUTION NO. 3052**

(Representatives Tollefson, Soukup, Brown, Grosz)
(Senators Mutch, Naaden)

CHARITABLE PROPERTY TAX EXEMPTION STUDY

A concurrent resolution directing the Legislative Council to study the property tax exemption for charitable organizations.

WHEREAS, the Constitution of North Dakota provides that property used exclusively for charitable purposes is exempt from taxation; and

WHEREAS, North Dakota statutes have provided property tax exemptions for property of institutions of public charity and the nature and activities of charities and amount of property owned by charities have changed substantially over the years; and

WHEREAS, acquisition of property by charities removes the property from the tax rolls and shifts additional tax burdens to remaining taxable property; and

WHEREAS, uncertainty exists regarding the appropriate interpretation of the statutory term "institutions of public charity" and whether charities should be subject to full or partial assessment of property taxes for the value of certain services provided for their benefit; and

WHEREAS, legislation considered by the Fifty-fifth Legislative Assembly indicated a need for thorough review of application of the property tax exemption for property of charities;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the property tax exemption for charitable organizations; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 19, 1997

SENATE CONCURRENT RESOLUTIONS

CHAPTER 614

SENATE CONCURRENT RESOLUTION NO. 4001

(Legislative Council)
(Budget Committee on Government Services)
(Senator St. Aubyn)
(Representatives Sveen, Wentz)

MENTAL HEALTH AND FOSTER CARE MONITORING

A concurrent resolution directing the Legislative Council to monitor mental health and foster care services.

WHEREAS, the Department of Human Services has developed a plan for an integrated multidisciplinary continuum of services for mentally ill individuals pursuant to North Dakota Century Code Section 50-06-06.5, which was a recommendation resulting from a 1985-86 study by the Legislative Council; and

WHEREAS, the Legislative Council has monitored services to the mentally ill and chemically dependent since the 1987-88 interim, including the role and function of the State Hospital and expanded community services for mentally ill and chemically dependent individuals; and

WHEREAS, each regional human service center operates a psychosocial rehabilitation center through contracts with private, nonprofit organizations for providing companionship and recreational activities for individuals with serious mental illness; and

WHEREAS, the 1991 Legislative Assembly began providing funding for clubhouse projects for providing prevocational skills training for individuals with serious mental illness and currently two psychosocial rehabilitation centers operate clubhouse projects; and

WHEREAS, the 1995 Legislative Assembly authorized the Mental Health Division to implement and supervise a unified mental health delivery system to assure that mental health services provided by the human service centers, the State Hospital, and private contractors are in accordance with the state plan; and

WHEREAS, the cost of services for children placed out of state in the foster care program increased from \$603,000 in fiscal year 1994 to \$1.1 million in fiscal year 1995; and

WHEREAS, the effect of ongoing federal and state welfare reform activity is unknown at this time; and

WHEREAS, residential child care facilities and residential treatment centers have expressed concern that reimbursement rate adjustments are not made on a

timely basis by the Department of Human Services and that the rates do not provide for the actual cost of services;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council monitor mental health and foster care services, including changes in the role of the State Hospital, psychosocial rehabilitation centers, and clubhouse projects; the effect of welfare reform on the delivery of mental health and foster care services; methods used to place children in the custody of the division of juvenile services; methods used to place children in residential child care facilities and residential treatment centers and methods of setting and levels of reimbursements for residential child care facilities and residential treatment centers; and items of legislative intent regarding mental health and foster care services; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 3, 1997

CHAPTER 615**SENATE CONCURRENT RESOLUTION NO. 4002**

(Legislative Council)
(Education Finance Committee)

ELEMENTARY AND SECONDARY EDUCATION STUDY

A concurrent resolution directing the Legislative Council to study those provisions of Title 15 of the North Dakota Century Code which relate to elementary and secondary education.

WHEREAS, many of the laws relating to the provision of elementary and secondary education in this state have been adopted over the years without regard to their interrelationship; and

WHEREAS, many of the laws relating to the provision of elementary and secondary education in this state set forth neither clear objectives nor directives for their administration; and

WHEREAS, many of the laws relating to the provision of elementary and secondary education in this state are duplicative, inconsistent, or illogically arranged;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study those provisions of Title 15 of the North Dakota Century Code which relate to elementary and secondary education; and

BE IT FURTHER RESOLVED, that the purpose of the study is to recommend changes to laws that are found to be irrelevant, duplicative, inconsistent, illogically arranged, or unclear in their intent and direction; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 20, 1997

CHAPTER 616**SENATE CONCURRENT RESOLUTION NO. 4003**

(Legislative Council)
(North Dakota/South Dakota Commission)

HIGHER EDUCATION COLLABORATION URGED

A concurrent resolution urging the State Board of Higher Education to continue to pursue collaborative efforts with the South Dakota Board of Regents.

WHEREAS, the State Board of Higher Education and the South Dakota Board of Regents have initiated discussion regarding cooperative ventures between the two university systems; and

WHEREAS, during the 1995-96 interim, the Legislative Council and the South Dakota Legislative Research Council established the North Dakota/South Dakota Commission to study and identify ways North Dakota and South Dakota can collaborate to deliver government services more efficiently; and

WHEREAS, the State Board of Higher Education and the South Dakota Board of Regents participated in the deliberations of the North Dakota/South Dakota Commission and identified several areas for potential cooperation between the university systems, including exploration of cooperative purchasing arrangements, implementation of joint student followup processes, development and improvement of research infrastructure and research capabilities, provision of services by the academic community to the public sector, distance education, development of information systems, and examination of reciprocity between the states for certain low enrollment programs;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-fifth Legislative Assembly urges the State Board of Higher Education to continue to pursue collaborative efforts with the South Dakota Board of Regents; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the State Board of Higher Education and the South Dakota Board of Regents.

Filed March 19, 1997

CHAPTER 617**SENATE CONCURRENT RESOLUTION NO. 4004**

(Legislative Council)
(North Dakota/South Dakota Commission)

ND - SD COLLABORATION STUDY

A concurrent resolution directing the Legislative Council to study methods through which North Dakota and South Dakota can collaborate to deliver government services more efficiently.

WHEREAS, during the latter portion of the 1995-96 interim, the North Dakota/South Dakota Commission studied methods through which the two states could cooperate to more efficiently provide government services; and

WHEREAS, the North Dakota/South Dakota Commission identified several areas in which the two states are currently cooperating or could establish cooperative efforts to provide government services more efficiently; and

WHEREAS, because numerous opportunities for cooperation were identified which could improve services and reduce costs, further study of potential areas of cooperation may be necessary for implementation of cooperative efforts;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council establish a committee of four senators and four representatives to work with a similar committee of South Dakota legislators to study methods through which North Dakota and South Dakota can collaborate to deliver governmental services more efficiently; and

BE IT FURTHER RESOLVED, that the committee solicit information and assistance from executive branch agencies and departments to determine areas in which the states can collaborate to deliver government services more efficiently and cost effectively; and

BE IT FURTHER RESOLVED, that the committee request reports annually from executive branch agencies and departments regarding efforts to cooperate with agencies and departments of South Dakota government; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 7, 1997

CHAPTER 618**SENATE CONCURRENT RESOLUTION NO. 4007**

(Senators Traynor, O'Connell, Sand)
(Representatives Henegar, Nicholas, Soukup)

WATERFOWL SEPTEMBER OPENING URGED

A concurrent resolution urging the North Dakota Game and Fish Department to make a request of the Secretary of the Interior and the United States Fish and Wildlife Service to open the waterfowl hunting season by September 15 of each year.

WHEREAS, the state's economy and the well-being of the people of North Dakota are dependent upon agriculture; and

WHEREAS, North Dakota produces more ducks than any other of the contiguous 48 states; and

WHEREAS, waterfowl historically have caused serious depredation and damage to crops in northern North Dakota; and

WHEREAS, most of this serious depredation occurred in the month of September;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-fifth Legislative Assembly urges the North Dakota Game and Fish Department to make a request of the Secretary of the Interior and the United States Fish and Wildlife Service to open the North Dakota waterfowl hunting season by September 15 of each year; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Secretary of the Interior, the regional director of the United States Fish and Wildlife Service, the members of the Central Flyway Council, the director of the North Dakota Game and Fish Department, and each member of the North Dakota Congressional Delegation.

Filed April 1, 1997

CHAPTER 619**SENATE CONCURRENT RESOLUTION NO. 4008**

(Senators Wanzek, Grindberg, O'Connell, Tomac)
(Representatives Nicholas, Wilkie)

CANADIAN CANOLA DATA USE URGED

A concurrent resolution urging Congress to require the Environmental Protection Agency to use Canadian data in its registration of crop protection chemicals appropriate for canola.

WHEREAS, North Dakota accounts for nearly one-half of all canola acreage in the United States; and

WHEREAS, increases in canola acreages have been limited by the lack of crop protection chemicals; and

WHEREAS, the Canadian government has allowed for the registration of approximately three dozen crop protection chemicals appropriate for canola; and

WHEREAS, the United States government, through the Environmental Protection Agency, has allowed for the registration of only six crop protection chemicals appropriate for canola; and

WHEREAS, the Environmental Protection Agency is already pursuing harmonization with Canada of the registration of crop protection chemicals; and

WHEREAS, the Environmental Protection Agency needs to put more resources into the harmonization with Canada of crop protection chemicals; and

WHEREAS, use of Canadian registration data by the United States Environmental Protection Agency could accelerate its registration process for crop protection chemicals appropriate for canola;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-fifth Legislative Assembly urges the Congress of the United States to require the Environmental Protection Agency to use Canadian data in its registration of crop protection chemicals appropriate for canola; and

BE IT FURTHER RESOLVED, that the Environmental Protection Agency be directed to commit the resources needed to harmonize with Canada the registration of crop protection chemicals for canola; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the chairmen of the Senate and House Committees on Agriculture and to each member of the North Dakota Congressional Delegation.

Filed March 11, 1997

CHAPTER 620**SENATE CONCURRENT RESOLUTION NO. 4009**

(Senators Wanzek, Grindberg, O'Connell, Tomac)
(Representatives Nicholas, Wilkie)

CANOLA INSURANCE PROGRAM URGED

A concurrent resolution urging Congress to require the Federal Crop Insurance Corporation to develop and maintain an insurance program for canola.

WHEREAS, North Dakota accounts for nearly one-half of all the canola acreage in the United States; and

WHEREAS, without crop insurance, many small grain farmers cannot obtain operating loans from financial institutions; and

WHEREAS, canola is no more risky for crop insurance than wheat or barley; and

WHEREAS, additional canola acreages would be planted if a federal crop insurance program comparable to that offered for wheat and barley were available;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-fifth Legislative Assembly urges the Congress of the United States to require the Federal Crop Insurance Corporation to develop and maintain an insurance program for canola; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the chairman of the Senate and House Committees on Agriculture and to each member of the North Dakota Congressional Delegation.

Filed March 7, 1997

CHAPTER 621**SENATE CONCURRENT RESOLUTION NO. 4013**

(Senators Naaden, B. Stenehjem, Kringstad, Kelsh, O'Connell)
(Representative R. Kelsch)

LEGISLATIVE EMPLOYEE COMPENSATION

A concurrent resolution designating Senate and House employment positions and fixing compensation.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That for the Fifty-fifth Legislative Assembly, the following positions are designated as employee positions of the Senate and House and are to be paid the wages indicated:

SENATE	
Secretary of the Senate	\$95.00
Assistant secretary of the Senate	80.00
Desk reporter	89.00
Bill clerk	74.00
Sergeant-at-arms	74.00
Secretary to majority leader	80.00
Staff assistant to majority leader	74.00
Secretary to minority leader	80.00
Staff assistant to minority leader	74.00
Chief committee clerk	78.00
Appropriations Committee clerk	78.00
Assistant Appropriations Committee clerk	74.00
Committee clerk for three-day committee	74.00
Committee clerk for two-day committee	70.00
Assistant committee clerk	62.00
Deputy sergeant-at-arms	62.00
Chief page and bill book clerk	68.00
Calendar clerk	74.00
Legislative assistant	58.00
HOUSE	
Chief Clerk	\$95.00
Assistant chief clerk	80.00
Desk reporter	89.00
Sergeant-at-arms	74.00
Bill clerk	74.00
Secretary to majority leader	80.00
Staff assistant to majority leader	74.00
Secretary to minority leader	80.00
Staff assistant to minority leader	74.00
Secretary to Speaker	74.00
Chief committee clerk	78.00
Appropriations Committee clerk	78.00
Assistant Appropriations Committee clerk	74.00

Committee clerk for three-day committee	74.00
Committee clerk for two-day committee	70.00
Assistant committee clerk	62.00
Payroll clerk	70.00
Deputy sergeant-at-arms	62.00
Chief page and bill book clerk	68.00
Calendar clerk	74.00
Chief telephone attendant	68.00
Legislative assistant	58.00

BE IT FURTHER RESOLVED, that each employee of the Fifty-fifth Legislative Assembly is entitled to an additional \$1 per day for each previous regular session of the Legislative Assembly during which that employee was paid for at least 45 days, as either an employee of the Senate or the House, and to receive this additional compensation, which may not exceed \$10 per day, that employee must certify to the Legislative Council the year of each regular session during which that employee was employed as required by this resolution; and

BE IT FURTHER RESOLVED, that each majority leader and each minority leader is entitled to two staff assistants, but each majority or minority leader may hire fewer or more assistants so long as the total daily compensation for the assistants hired does not exceed the total daily amount authorized for those positions by this resolution; and

BE IT FURTHER RESOLVED, that the report of the Employment Committee of the respective house identify the number of employees in each position by listing every employee and the position for which employed; and

BE IT FURTHER RESOLVED, that with the approval of the Employment Committee of the respective house, a position may be converted to a part-time position, with the daily compensation converted to a per hour rate of pay; and

BE IT FURTHER RESOLVED, that if any employee resigns, is discharged, or for other reasons terminates employment, the compensation provided by this resolution for that employee ceases effective the last day of employment.

Filed January 24, 1997

CHAPTER 622**SENATE CONCURRENT RESOLUTION NO. 4014**

(Senators Grindberg, Krebsbach, Wogsland)
(Representatives Dalrymple, Mahoney, Torgerson)

COUNTY GOVERNMENT RESTRUCTURING STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of restructuring county government.

WHEREAS, proposals to consolidate services in counties of the state have been discussed frequently and considered by the Legislative Assembly; and

WHEREAS, in recent years counties have entered a variety of joint efforts to deliver services more cost effectively, but the efficiency and transferability of those joint efforts have not been evaluated; and

WHEREAS, consolidation and coordination efforts in other areas have proven to be difficult without sufficient technical assistance; and

WHEREAS, because there are potential advantages and disadvantages to changing the structure of county government, thoughtful review and study are needed to fully examine the legal and administrative issues necessary to make a decision in the best interest of all citizens of the state; and

WHEREAS, a comprehensive study of restructuring county government is a many-sided issue that needs thorough study and comment from citizens;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of restructuring county government; and

BE IT FURTHER RESOLVED, that the study include an examination of examples of consolidation of services to determine the cost-effectiveness and transferability of those consolidations and an examination of methods through which the state may be able to provide affordable technical assistance to counties choosing to consolidate, merge, or share services and a review of the effect of 1993 Session Laws Chapter 401; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 25, 1997

CHAPTER 623**SENATE CONCURRENT RESOLUTION NO. 4016**

(Senators DeMers, Mathern, Nalewaja, Yockim)
(Representative Gulleson)

**VISUALLY IMPAIRED SERVICES LEGISLATION
URGED**

A concurrent resolution urging each member of the North Dakota Congressional Delegation to seek and promote federal legislation that provides for in-home adjustment services for the visually impaired older citizens of the state of North Dakota.

WHEREAS, visual impairment is common among people age 55 and over, due in part to the major diseases of the eye which are associated with the aging process, including macular degeneration, cataracts, glaucoma, and diabetic retinopathy; and

WHEREAS, it is estimated that more than 10,500 North Dakota residents over 55 years of age experience severe vision impairment; and

WHEREAS, one-to-one skills training would make it possible for individuals with reduced vision to maintain or improve their quality of life in the home, community, and job environment; and

WHEREAS, existing federal legislation, which is funded only on a limited competitive basis, calls for the provision of training to older visually impaired individuals in the areas of orientation and mobility, communication skills, activities of daily living, and use of low vision aids and provides for family and peer counseling; and

WHEREAS, the state of North Dakota has matched federal funds in the past;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-fifth Legislative Assembly urges the North Dakota Congressional Delegation to seek maximum funding of the Older Blind (Title VII, Chapter 2) portion of the Vocational Rehabilitation Act of 1992, as amended; and

BE IT FURTHER RESOLVED, that vision rehabilitation services be included in existing Medicare, Medicaid, and other third-party reimbursement programs or considered as part of an overall national health plan; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to each member of the North Dakota Congressional Delegation.

Filed April 1, 1997

CHAPTER 624**SENATE CONCURRENT RESOLUTION NO. 4017**

(Senators Naaden, O'Connell, B. Stenehjem)

LEGISLATIVE EMPLOYEE COMPENSATION STUDY

A concurrent resolution directing the Legislative Council to study legislative employee compensation.

WHEREAS, Legislative Assembly employees function in an extremely demanding work environment and carry out their duties with great dispatch, ability, and efficiency; and

WHEREAS, attracting and retaining high quality employees is critical to the continued ability of the Legislative Assembly to conduct its deliberations within the limited time available; and

WHEREAS, while all legislative employee positions require good interpersonal and communication skills, various positions involve different degrees of ability, experience, and technical knowledge which necessitate differences in compensation; and

WHEREAS, Legislative Assembly employee compensation was last studied during the 1993-94 interim, with resulting adjustments to reflect varying levels of knowledge, technical skills, and supervisory skills; and

WHEREAS, assuring adequate compensation to legislative employees is of primary importance to attracting and retaining the talented and dedicated employees necessary for the Legislative Assembly to conduct its deliberations in an appropriate atmosphere;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study legislative employee compensation; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 7, 1997

CHAPTER 625**SENATE CONCURRENT RESOLUTION NO. 4019**

(Senators B. Stenehjem, Solberg, St. Aubyn)
(Representatives Belter, Freier, Koppelman)

TRANSPORTATION FUNDING STUDY

A concurrent resolution directing the Legislative Council to study the adequacy of transportation funding in North Dakota.

WHEREAS, traffic has caused increased demands of the entire transportation system. Approximately eighteen million miles are traveled daily on North Dakota streets and highways. The North American Free Trade Agreement has increased truck volumes as much as fifty percent in one year on certain segments of North Dakota highways; and

WHEREAS, the Devils Lake flooding situation has depleted transportation funds for all government agencies in the basin; and

WHEREAS, the Four Bears Bridge is beyond the funding capacity of the North Dakota Department of Transportation; and

WHEREAS, the existing funding mechanisms were established in a different era and have not kept up with our changing economy or demographics; and

WHEREAS, there is increasing pressure for the federal government to fund only a small portion of the transportation program in each state; and

WHEREAS, existing funding sources have not kept pace with inflation, increases in usage or cost of providing transportation infrastructure;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council is directed to study the adequacy of existing, and the potential for new, funding sources to meet system needs for North Dakota's entire transportation infrastructure; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 25, 1997

CHAPTER 626**SENATE CONCURRENT RESOLUTION NO. 4020**

(Senators Nalewaja, Krauter, W. Stenehjem)
(Representatives Carlisle, Kretschmar, Warner)

CRIMINAL JUSTICE SUPPORT MECHANISMS STUDY

A concurrent resolution directing the Legislative Council to study and develop a long-term plan for the investigatory and penological support mechanisms of the criminal justice system.

WHEREAS, cooperation is needed among fire arson investigators, sheriffs, police officers, the state highway patrol, state's attorneys, the bureau of criminal investigation, the state fire marshal, the department of corrections and rehabilitation, the state crime laboratory, the state forensic examiner, and the state toxicologist for adequate investigation of crimes, proper evidence handling, and efficient case tracking and management; and

WHEREAS, new technology provides more evidence, requires new equipment, and necessitates skilled personnel to operate the equipment; and

WHEREAS, the state forensic examiner needs to be supported by a coroner system that is effective, coordinated, and fiscally sound to adequately investigate deaths; and

WHEREAS, sheriffs and the department of corrections and rehabilitation need to develop a long-range plan for the management of inmates;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study and develop a long-term plan for the investigatory and penological support mechanisms of the criminal justice system; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 25, 1997

CHAPTER 627**SENATE CONCURRENT RESOLUTION NO. 4021**

(Senators C. Nelson, Krebsbach, Lindaas)
(Representatives Hanson, Sabby, Wilkie)

TFFR RESUMED TEACHING STUDY

A concurrent resolution directing the Legislative Council to study participation in the teachers' fund for retirement by retired persons who have resumed teaching.

WHEREAS, the 1995-96 interim Employee Benefits Programs Committee considered a proposal that would have allowed retired persons to return to teaching for up to one year without losing any benefits if at least 50 percent of the salary earned by that person was donated to in the school district's educational foundation; and

WHEREAS, the consulting actuary of the teachers' fund for retirement reported that the proposal would not have had a measurable actuarial impact on the teachers' fund for retirement but that the proposal could endanger the qualified status of the plan under federal law; and

WHEREAS, under qualified retirement plans, benefits are not taxable until they are received, but if a plan loses its qualified status, accrued vested benefits become immediately taxable; and

WHEREAS, because the consulting actuary reported that the proposal could endanger the qualified status of the plan, the committee gave the proposal an unfavorable recommendation; and

WHEREAS, school district educational foundations help support school districts in an era when school districts need all the financial help available; and

WHEREAS, retired teachers have a vast reservoir of experience and knowledge which would greatly benefit the students if school districts were able to tap this reservoir;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study participation in the teachers' fund for retirement by retired persons who have resumed teaching; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 19, 1997

CHAPTER 628

SENATE CONCURRENT RESOLUTION NO. 4023

(Senators B. Stenehjem, Lee, Wogsland)
(Representatives Brown, Christenson, Wardner)

PRIVATIZATION STUDY

A concurrent resolution directing the Legislative Council to study the process of privatization and contracting for public sector services.

WHEREAS, although North Dakota Century Code Chapter 54-44.4 sets forth comprehensive laws regarding the purchase of personal property by the state, the state may need to further establish comprehensive laws regarding the privatizing and contracting for public services to protect its citizens and effectively manage the resources of the state; and

WHEREAS, the state needs to have a rigorous methodology and process for determining whether privatization and contracting for services are appropriate, efficient, and effective; and

WHEREAS, the state has a compelling need to establish a framework for privatizing and contracting for services which provides formal access to decisionmaking, ensures an open bidding process, monitors existing contracts for compliance, and allows for involvement by citizens, legislators, public employees, and private sector contractors; and

WHEREAS, questions surrounding privatization and contracting for public services necessitate a study that identifies immediate and long-term advantages and disadvantages of privatization and contracting for public sector services, identifies barriers to making public sector services more efficient, develops accurate methodologies of comparing costs of similar public and private sector services, reviews performance standards for both public and private sector providers of public services, identifies goals and measurable results of public services provided by the private sector, develops identifiable and measurable review processes of all privatized contracts for contract continuance, including providing sufficient resources to monitor privatization contracts on an ongoing basis, and promotes public education on privatization and contracting for public sector services;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the process of privatization and contracting for public sector services; and

BE IT FURTHER RESOLVED, that the Legislative Council seek participation from representatives of the executive branch, higher education, political subdivisions, public employees and employee organizations, and private sector businesses; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 7, 1997

CHAPTER 629**SENATE CONCURRENT RESOLUTION NO. 4024**

(Senators Mathern, DeMers, Lee, G. Nelson)
(Representatives Boucher, Dorso)

GOVERNMENTAL ELECTRONIC MAIL STUDY

A concurrent resolution directing the Legislative Council to study the development of an electronic mail and records management policy for governmental entities.

WHEREAS, various state agencies and institutions and numerous political subdivisions operate or maintain electronic mail systems through which government officials and employees and others are able to communicate and transmit information; and

WHEREAS, state law does not address the impact of open records laws with respect to the use of electronic mail, nor does it address the privacy issues surrounding monitoring of electronic mail; and

WHEREAS, before the state adopts an electronic mail policy, comprehensive study of privacy issues such as monitoring of electronic communications and what types of electronic communications are subject to open records laws is needed; and

WHEREAS, official business may be conducted electronically using digital signatures; and

WHEREAS, standards and procedures need to be reviewed for the effective management of the electronic records;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the development of an electronic mail and records management policy for governmental entities; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 25, 1997

CHAPTER 630

SENATE CONCURRENT RESOLUTION NO. 4025

(Senators Nalewaja, Cook, C. Nelson, Robinson)
(Representatives Grande, Kliniske)

SEXUAL ABUSE VICTIM STUDY

A concurrent resolution directing the Legislative Council to study the effects of sexual abuse on child victims, strategies to assist child victims and the parents of child victims, the use and effectiveness of the mandatory reporting law, effective deterrents, and the need for training of professionals, public awareness initiatives, and training of school personnel in the recognition of victims and in prevention activities.

WHEREAS, based upon a survey of parents, a December 1995 Gallup poll estimated that 23 percent of those parents as children were sexually abused by an adult or older child and that 1,300,000 children in the United States have been forced to touch an adult or older child in a sexual manner, have been forcibly touched by an adult or older child in a sexual manner, or have been forced to have sex with an adult or older child; and

WHEREAS, in this state in fiscal year 1995, 380 reports of suspected child sexual abuse by a caretaker were reported to the Department of Human Services, and in 122 of those reports a determination was made that there was probable cause to believe child sexual abuse was indicated, and an additional 234 reports of suspected noncaretaker child sexual abuse were made to the department and were referred to law enforcement agencies; and

WHEREAS, the Department of Corrections and Rehabilitation manages over 300 adult sex offenders and research about adult sex offenders has revealed that more than one-half offended as children and that treatment can stop many of these offenders from reoffending; and

WHEREAS, North Dakota state law provides for mandatory reporting of suspected abuse; and

WHEREAS, parents of a sexually abused child may be emotionally traumatized by their child's victimization and may be in need of support including a parents' network; and

WHEREAS, sexually abused children may suffer from physical, mental, and emotional deterioration, low self-esteem, poor academic progress, inappropriate behaviors, and suicidal tendencies; and

WHEREAS, the child protection services program through the Alliance for Sexual Abuse Prevention and Treatment promotes public awareness of child abuse issues and the prevention of child sexual abuse, and also provides training for professionals; and

WHEREAS, the Child Fatality Review Panel monitors unexpected child deaths and recommends changes in policy, practices, and law to prevent child deaths; and

WHEREAS, evidence suggests that efforts to prevent abuse and to promptly and appropriately treat victims and offenders will save taxpayers millions of dollars over time and will save children from trauma and lifelong suffering;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the effects of sexual abuse on child victims, strategies to assist child victims and the parents of child victims, the use and effectiveness of the mandatory reporting law, effective deterrents, and the need for training of professionals, public awareness initiatives, and training of school personnel in the recognition of victims and in prevention activities; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 20, 1997

CHAPTER 631**SENATE CONCURRENT RESOLUTION NO. 4026**

(Senators DeMers, Mathern, C. Nelson)
(Representatives Gulleason, Jensen, Wentz)

DOMESTIC VIOLENCE TASK FORCE STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of establishing a statewide domestic violence task force to address domestic violence prevention issues and adopt a statewide domestic violence prevention strategy.

WHEREAS, the problem of domestic violence continues to escalate in this state; and

WHEREAS, domestic violence is a pervasive problem that often devastates its victims physically, emotionally, spiritually, and financially; and

WHEREAS, the North Dakota Supreme Court has urged a unified effort be made at all levels, including local and state, public and private, executive, legislative, and judicial, to implement the state strategy to attack and resolve the domestic violence problem in the state; and

WHEREAS, there currently exists a Governor's task force that deals exclusively with the expenditure of federal Violence Against Women Act funds but does not address prevention strategies;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of establishing a statewide domestic violence task force to address domestic violence prevention issues and adopt a statewide domestic violence prevention strategy; and

BE IT FURTHER RESOLVED, that in conducting the study, the Legislative Council investigate the availability of federal funds to assist in funding the study and seek the involvement of the North Dakota Supreme Court, the Governor, the Attorney General, and the North Dakota Council on Abused Women's Services; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 25, 1997

CHAPTER 632**SENATE CONCURRENT RESOLUTION NO. 4027**

(Senators Wanzek, Kelsh)
(Representatives D. Johnson, Murphy, Schmidt, Wilkie)

DOT HIGHWAY 281 STUDY

A concurrent resolution requesting the North Dakota Department of Transportation to study the feasibility and desirability of upgrading United States Highway 281 to an all-year load-free highway.

WHEREAS, United States Highway 281 extends from the Peace Garden on the Canadian border to Brownsville, Texas; and

WHEREAS, the International United States Highway Association has actively promoted United States Highway 281 as a corridor for commerce and 267 miles of this corridor are in this state; and

WHEREAS, United States Highway 281 is heavily used the entire year to move many of this state's raw and finished products; and

WHEREAS, the average annual daily traffic per day in Jamestown is 20,500 vehicles per day and the annual daily truck traffic is 475 trucks per day; and

WHEREAS, 60 miles of pavement on United States Highway 281 are 30 years old or older, the average age of the pavement is 22 years, and the design life for the pavement is 20 years;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the North Dakota Department of Transportation be requested to study the feasibility and desirability of making United States Highway 281 an all-year load-free highway; and

BE IT FURTHER RESOLVED, that the North Dakota Department of Transportation report its findings and recommendations, together with any legislation to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 25, 1997

CHAPTER 633**SENATE CONCURRENT RESOLUTION NO. 4030**

(Senators DeMers, Kinnoin, Traynor)
(Representatives Christopherson, D. Johnson, Kerzman)

WELFARE REFORM TRIBAL RELATIONS STUDY

A concurrent resolution directing the Legislative Council to study the issues of welfare reform as they relate to the relationship between the state and the federally recognized Indian tribes within the state.

WHEREAS, Congress has enacted Public Law 104-193, which substantially reforms the welfare system and which includes block grants to the states and to federally recognized Indian tribes, if the tribes so choose, along with strict work requirements for recipients of public assistance and time limits for recipients of public assistance; and

WHEREAS, members of federally recognized Indian tribes represent less than six percent of the population of the state; however, approximately 25 percent of the welfare caseload of the state is tribal members who live on reservations; and

WHEREAS, tribal economies have not been as strong as the economy of the remainder of the state which will make compliance with the work participation rate requirements of the welfare reform legislation more difficult to achieve on the reservations; and

WHEREAS, the federally recognized tribes in the state are undecided as to whether to apply for state and federal block grants that would allow the tribes to design and administer their own welfare system; and

WHEREAS, the federally recognized tribes in the state are unsure as to the role the state should play, if any, in the development, funding, and administration of a tribally administered welfare program; and

WHEREAS, the federally recognized tribes in the state desire to engage in constructive dialogue with the state regarding welfare reform issues of mutual concern;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the issues of welfare reform as they relate to the relationship between the state and the federally recognized Indian tribes within the state; and

BE IT FURTHER RESOLVED, that the Legislative Council, in conducting its study, shall solicit input from tribal members, tribal leaders, and tribal government officials interested in state and tribal welfare reform issues; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 20, 1997

CHAPTER 634**SENATE CONCURRENT RESOLUTION NO. 4032**

(Senators Tomac, Kelsh)
(Representatives Brandenburg, Brown, DeKrey, Renner)

PACKING INDUSTRY COMPETITION URGED

A concurrent resolution urging the United States Department of Agriculture to support efforts to restore competition in the livestock packing industry.

WHEREAS, the State of North Dakota has many agriculture livestock operations, which support the economy within the state; and

WHEREAS, market prices for cattle have recently fallen to levels that are below the production costs and that this situation is a result of a highly concentrated market; and

WHEREAS, this situation threatens the stability of the economy within the borders of the state; and

WHEREAS, the United States Secretary of Agriculture and the Grain Inspection and Packers and Stockyards Administration have recently published the Western Organization of Resource Councils' Livestock Concentration Rulemaking Petition on behalf of citizens and organizations within North Dakota, and five other states;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-fifth Legislative Assembly of the State of North Dakota supports actions taken by the United States Secretary of Agriculture to restore competitive practices to the livestock slaughter trade, including:

1. Prohibiting packers who process more than five percent of the national daily slaughter of a given species from procuring livestock for slaughter through the use of forward contracts, unless the contracts contain a firm base price that can be equated to a fixed dollar amount on the day the contract is signed and the forward contract is offered or bid in an open, public manner; and
2. Prohibiting packers, other than farmer-owned cooperatives, from owning and feeding livestock, unless the livestock are sold for slaughter in an open, public market; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Secretary of the United States Department of Agriculture, the Administrator of the Grain Inspection and Packers and Stockyards Administration and to each member of the North Dakota Congressional Delegation.

Filed March 25, 1997

CHAPTER 635**SENATE CONCURRENT RESOLUTION NO. 4033**

(Senators Tomac, Freborg)
(Representatives Grosz, Mahoney)

MISSOURI RIVER BANK PROTECTION URGED

A concurrent resolution urging the Congress of the United States and the United States Army Corps of Engineers to assume responsibility for Missouri River bank erosion downstream from all Pick-Sloan Project dams, including the Garrison Dam to Oahe Reservoir reach in North Dakota, and to continue a program of annually appropriating funds for the maintenance and construction of bank protection projects.

WHEREAS, the Flood Control Act of 1944, as amended, assured benefits to all 10 states within the Missouri River basin under a control and management program that came to be commonly known as the Pick-Sloan Project; and

WHEREAS, the Congress has directed the United States Army Corps of Engineers to build, operate, and maintain all the features of the Pick-Sloan Project; and

WHEREAS, the Pick-Sloan Project provides major flood control benefits, recreational benefits, water supply benefits, hydropower benefits, and navigational benefits for states lying below Sioux City, Iowa, through construction of large reservoirs in states lying above that point, and by channelizing the Missouri River from Sioux City, Iowa, to St. Louis, Missouri, at federal expense; and

WHEREAS, the Pick-Sloan Project reservoirs have been in place for many years, thus providing the downstream states in the Missouri River Basin all of the benefits promised in the Pick-Sloan Project; and

WHEREAS, construction of facilities under the Pick-Sloan Project has, to date, resulted in \$10.6 billion of flood protection to downstream interests and has allowed those downstream interests to develop the original floodplain of the Missouri River for industrial, municipal, and agricultural uses; and

WHEREAS, the United States Army Corps of Engineers has stabilized and continues to maintain the entire channel of the Missouri River from Sioux City, Iowa, to St. Louis, Missouri, all at federal expense; and

WHEREAS, under the Pick-Sloan Project, North Dakota has sacrificed over 550,000 acres of land, which has meant the permanent loss of 2,641 jobs, \$45 million of annual personal income, and \$131 million of annual gross business volume; and

WHEREAS, almost two-thirds of the inexpensive hydroelectric power generated by Garrison Dam in North Dakota, which was built pursuant to the Pick-Sloan Project, is used in states other than North Dakota; and

WHEREAS, the United States Army Corps of Engineers stated in its final report to Congress dated December 1981 concerning the Missouri River streambank

erosion that "bank erosion in this reach results in a permanent net loss of high value lands. This process, unless halted, would eventually transform the present river into a wide area of sandbars and channels, occupying an increasing proportion of the valley width between the bluffs"; and

WHEREAS, the lands adjacent to the Missouri River have been and will continue to be seriously eroded and permanently lost to the local landowners and the state of North Dakota because of reservoir management that releases highly fluctuating amounts of clear water capable of eroding and transporting large amounts of soil; and

WHEREAS, soil eroded from the banks of the Missouri River is being deposited as a delta in the headwaters of the Oahe Reservoir and Lake Sakakawea thereby causing the water table to rise under the adjacent land, and is increasing the frequency and severity of ice jam hazards and has, according to recent United States Army Corps of Engineers' pronouncements, endangered 6,000 acres of land containing 150 homes, industrial development, and valuable farmland around Lake Oahe; and in the headwaters area of Lake Sakakawea, the delta is endangering the Buford-Trenton irrigation district, the water intake for the city of Williston, and many acres of valuable farmland; and

WHEREAS, a similar bank erosion problem exists for a 58-mile reach on the South Dakota-Nebraska border downstream from the Gavins Point Dam and also between the Fort Peck Dam in Montana and Lake Sakakawea; and

WHEREAS, destructive bank erosion continues when high winter water releases for power generation occur; and

WHEREAS, Section 33 of the Water Resource Development Act of 1988 amended the Flood Control Act of 1944 and directed the Secretary of the Army to undertake measures that the Secretary of the Army determines are needed to alleviate bank erosion and related problems associated with reservoir releases along the Missouri River between the Fort Peck Dam in Montana and a point 58 miles downstream of the Gavins Point Dam on the South Dakota-Nebraska border; and

WHEREAS, at the request of Congress, a 1988 General Accounting Office study agreed that since the closure of the Garrison Dam accretion no longer occurs and a net loss of land results and the study also identified one option of funding bank stabilization projects as allocating these costs, whether economically justifiable or not, to Pick-Sloan Project purposes; and

WHEREAS, Congress appropriated \$1.5 million in fiscal year 1992 and \$1.5 million in fiscal year 1993 for the purpose of protecting the banks of the Missouri River; and

WHEREAS, the United States Army Corps of Engineers has used these funds for maintenance of existing bank protection projects, and the corps insists that new protection projects may not be constructed unless a site-specific benefit-cost ratio greater than one exists which is contrary to the language and intent of Section 33 of the Water Resource Development Act of 1988 and contrary to the funding criteria of many other projects the United States Army Corps of Engineers has found necessary to complete the Pick-Sloan Project;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-fifth Legislative Assembly urges the Congress of the United States to continue the responsibility for the protection of lands endangered below all Pick-Sloan Project dams by the operation of the Pick-Sloan Project; and

BE IT FURTHER RESOLVED, that the Congress of the United States is urged to continue a program of annually appropriating funds to repair existing bank protection projects now in danger of failure and to begin to construct bank protection projects in the most critical locations; and

BE IT FURTHER RESOLVED, that the United States Army Corps of Engineers, in evaluating each erosion site, disregard site-specific benefit-cost studies as stated in the Government Accounting Office study as was the intent of Section 33 of the Water Resource Development Act of 1988 and that if benefit-cost studies are made, that the benefits are project-wide and include the delta problems and the enhancement of hydropower and water release capabilities; and

BE IT FURTHER RESOLVED, that the members of the North Dakota Congressional Delegation are urged to work diligently with the senators and congressmen of the states of Montana, South Dakota, and Nebraska to secure appropriations of these necessary funds; and

BE IT FURTHER RESOLVED, that funding for this project not be a normal federal water project appropriation, but rather be charged to the construction and maintenance of the Pick-Sloan Project; and

BE IT FURTHER RESOLVED, that the United States Army Corps of Engineers be urged to initiate a program to construct bank protection structures along the Missouri River between Fort Peck and a point 58 miles downstream of Gavins Point Dam, as directed by Section 33 of the Water Resource Development Act of 1988; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Secretary of the Army; Secretary of the Interior; District Engineer, Omaha District, United States Army Corps of Engineers; the Governor; each member of the North Dakota State Water Commission; and each member of the North Dakota, South Dakota, Nebraska, and Montana Congressional Delegations.

Filed March 25, 1997

CHAPTER 636**SENATE CONCURRENT RESOLUTION NO. 4034**

(Senators Tomac, Freborg)
(Representatives Grosz, Mahoney)

PICK-SLOAN MASTER MANUAL REVISIONS URGED

A concurrent resolution urging the United States Army Corps of Engineers to include provisions for the protection of recreation, municipal, industrial, irrigation, and other interests on the Missouri River in North Dakota in developing a revised master manual for the future operation of the Pick-Sloan Project.

WHEREAS, the Flood Control Act of 1944, as amended, assured benefits to all 10 states within the Missouri River Basin under a control and management program that came to be commonly known as the Pick-Sloan Project; and

WHEREAS, the Congress of the United States has directed the United States Army Corps of Engineers to build, operate, and maintain all the features of the Pick-Sloan Project; and

WHEREAS, the Pick-Sloan Project provides major flood control benefits, recreational benefits, water supply benefits, hydropower benefits, and navigational benefits for the downstream states of Iowa, Nebraska, Missouri, and Kansas through construction of large reservoirs in states lying upstream from these states, and by channelizing the Missouri River from Sioux City, Iowa, to St. Louis, Missouri, at federal expense; and

WHEREAS, the Pick-Sloan Project reservoirs have been in place for many years, thus providing the downstream states in the Missouri River Basin all of the benefits promised in the Pick-Sloan Project; and

WHEREAS, construction of facilities under the Pick-Sloan Project has, to date, resulted in \$10.6 billion of flood protection to downstream interests and has allowed these downstream interests to develop the original floodplain of the Missouri River for industrial, municipal, and agricultural uses; and

WHEREAS, under the Pick-Sloan Project, North Dakota has sacrificed over 550,000 acres of land, which has meant the permanent loss of 2,641 jobs, \$45 million of annual personal income, and \$131 million of annual gross business volume; and

WHEREAS, the United States Army Corps of Engineers is now in the process of revising its master manual for the operation of the entire Pick-Sloan Project in future years; and

WHEREAS, the construction of the Pick-Sloan Project has divided the Missouri River in North Dakota into four distinct regions, namely, the Missouri River reach above Williston, Lake Sakakawea, the Missouri River reach from Garrison Dam to the headwaters of Lake Oahe, and Lake Oahe; and

WHEREAS, as the recreation industry on the Missouri River mainstem in North Dakota, which has developed into a \$67 million per year industry, suffered severely when the United States Army Corps of Engineers allowed lake levels to drop drastically during the drought of the late 1980s and the early 1990s; and

WHEREAS, the United States Army Corp of Engineers, in its new proposed operation plan called the Missouri River Master Manual Preferred Alternative, is planning to allow Lake Sakakawea to drop to 1,775 feet mean sea level and Lake Oahe to 1,540 feet mean sea level in future drought years, thereby again severely damaging North Dakota's recreation industry; and

WHEREAS, the riverbanks in the Garrison Dam to Oahe Reservoir reach consist of ancient floodplain deposits that have been and will be severely eroded with great loss of valuable land whenever high water flows are released from Garrison Dam; and

WHEREAS, the irrigators, fishermen, boaters, industrial, and municipal water intakes, dredged channels, and marinas have all utilized the moderate summer river levels of the Garrison to Oahe reach both before and after the construction of the Garrison Dam; and

WHEREAS, the United States Army Corps of Engineers, in its proposed master manual, is proposing high spring releases every third year and these releases will cause severe bank erosion and loss of much valuable land; and

WHEREAS, the United States Army Corps of Engineers is also proposing very low water releases during the summer to allow endangered shore birds to nest, which will seriously affect many irrigators, recreation users, water intakes, dredged channels, and marinas;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-fifth Legislative Assembly requests the United States Army Corps of Engineers to respect the large sacrifice North Dakota has made in order that the Pick-Sloan Project could be built; and

BE IT FURTHER RESOLVED, that the United States Army Corps of Engineers, in its new master manual, provide for Lake Sakakawea minimum levels of at least 1,802 feet mean sea level and Lake Oahe levels of at least 1,569 feet mean sea level, so that North Dakota's flourishing recreation industry may continue to operate; and

BE IT FURTHER RESOLVED, that the United States Army Corps of Engineers, in its master manual, delay any unnecessary high and very high water releases on the free flowing reaches of the Missouri River, which cause the unnecessary loss of valuable land and an increase in flood damage until such time when the riverbanks are protected; and

BE IT FURTHER RESOLVED, that the United States Army Corps of Engineers more evenly balance the needs of endangered species in the Upper Missouri River Basin with the requirements for water supply, the reduction of bank erosion, recreation, and flood control in the free flowing stretches of the Missouri River; and

BE IT FURTHER RESOLVED, that the Governor, members of the North Dakota Congressional Delegation, the State Engineer and staff, director of the Game and Fish Department and staff, and many others be commended for their efforts to date and be urged to continue to work diligently at the local and national levels to influence the United States Army Corps of Engineers to adopt a master manual for the future operation of the Missouri River that is acceptable to all areas and interests on the Missouri River in North Dakota; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Division Commander of the Missouri River Division of the United States Army Corps of Engineers in order to be part of the public record for the Missouri River Master Manual Draft Environmental Impact Statement; the Secretary of the Army; the Secretary of the Interior; the District Engineer, Omaha District, United States Army Corps of Engineers; the Governor; each member of the State Water Commission; and each member of the North Dakota, South Dakota, Wyoming, and Montana Congressional Delegations.

Filed March 25, 1997

CHAPTER 637**SENATE CONCURRENT RESOLUTION NO. 4035**

(Senators Thompson, LaFountain, Wogsland)
(Representatives Kerzman, Warner, Wilkie)

**NORTH AMERICAN INDIGENOUS GAMES
CONGRATULATED**

A concurrent resolution congratulating the North American Indigenous Games TEAM North Dakota, an indigenous sports organization comprised of members from the Spirit Lake Nation; Standing Rock Sioux; Three Affiliated Tribes; and Turtle Mountain Band of Chippewa, for successfully securing the bid to host the 1999 North American Indigenous Games in Fargo, North Dakota, to be held July 28 through August 27, 1999.

WHEREAS, the mission of the North American Indigenous Games is to improve the quality of life for indigenous peoples by supporting self-determined sports and cultural activities which encourage equal access to participation in the social and cultural fabric of the communities where they reside and which respect indigenous distinctiveness; and

WHEREAS, the North American Indigenous Games will showcase the athletic skills, abilities, and talents of North Dakota native youth and adult athletes, who will serve as positive role models for healthy living for the native youth as well as the nonnative youth of our state; and

WHEREAS, the youth of North Dakota, who are our future leaders, will be encouraged to develop positive leadership abilities by the organization and participation in this outstanding event; and

WHEREAS, the North American Indigenous Games will provide an opportunity to promote tourism in North Dakota to showcase the history of North Dakota and plains culture, history, and native heritage of the Indian nations of this state; and

WHEREAS, this international event is expected to draw over 30,000 visitors to the state of North Dakota and is expected to provide a direct economic impact of an estimated \$20 million during the North American Indigenous Games;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-fifth Legislative Assembly supports and endorses the 1999 North American Indigenous Games in the Fargo-Moorhead area in July and August of 1999; and

BE IT FURTHER RESOLVED, that the Legislative Assembly encourages the citizens, state agencies, and private sector of North Dakota to share their hospitality and to fully support the successful accomplishment of this worthwhile endeavor.

Filed March 25, 1997

CHAPTER 638**SENATE CONCURRENT RESOLUTION NO. 4036**

(Senators Nalewaja, Cook, C. Nelson, Robinson, W. Stenehjem)
(Representative Kliniske)

DISCRIMINATION STUDY

A concurrent resolution directing the Legislative Council to study the level of and remedies for discrimination in this state.

WHEREAS, Congress and the North Dakota Legislative Assembly have enacted laws prohibiting discrimination; and

WHEREAS, this state has operating within it many state and federal agencies with the power to investigate and provide appropriate remedies in different cases of discrimination; and

WHEREAS, there needs to be a determination of whether there are instances of discriminatory actions in violation of state and federal laws before the Legislative Assembly can fashion appropriate remedies; and

WHEREAS, if discriminatory actions are found to exist, there needs to be a determination of whether existing state agencies have the power to remedy those activities; and

WHEREAS, remedies available in this state should be compared to procedures used by other states to investigate and provide appropriate remedies in cases of discrimination;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the level of and remedies for discrimination in this state; and

BE IT FURTHER RESOLVED, that the study determine the degree of discrimination in this state, determine current and additional remedies including educational initiatives to prevent discrimination, and develop recommendations to establish a commission visible to the public with representative membership able to objectively investigate citizen complaints and enforce remedies; and

BE IT FURTHER RESOLVED, that the study include an examination of the membership, structure, authority, duties and responsibilities, and funding of commissions in other states; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 19, 1997

CHAPTER 639**SENATE CONCURRENT RESOLUTION NO. 4037**

(Senators St. Aubyn, Robinson, Thane)
(Representatives Delmore, Kliniske, Poolman)

BOILER OPERATOR LICENSING STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of licensing high pressure boiler operators, including which state agency would manage a state licensing process, the fees necessary to fund a licensing program, whether adequate training opportunities exist to support licensing, and whether any other state has a boiler licensing program with which this state could join.

WHEREAS, the operation of high pressure boilers and other high pressure vessels may pose significant safety risks; and

WHEREAS, North Dakota does not license high pressure boiler operators;
and

WHEREAS, a comprehensive study of the actual risks from not licensing high pressure boiler operators, the availability of training programs, and other states' laws and practices may be appropriate before implementing licensure requirements for high pressure boiler operators;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of licensing high pressure boiler operators, including which state agency would manage a state licensing process, the fees necessary to fund a licensing program, whether adequate training opportunities exist to support licensing, and whether any other state has a boiler licensing program with which this state could join; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 20, 1997

CHAPTER 640**SENATE CONCURRENT RESOLUTION NO. 4038**

(Senators St. Aubyn, Solberg, Robinson)
(Representatives Delmore, Monson, Skarphol)

ADVOCACY PROGRAM MERGER STUDY

A concurrent resolution directing the Legislative Council to study the effectiveness of and methods to improve advocacy programs administered by the Department of Human Services and the feasibility and desirability of merging those advocacy programs, including the vulnerable adult protective services program, into the protection and advocacy program.

WHEREAS, the Committee on Protection and Advocacy provides advocacy and protective services for persons with developmental disabilities and persons with mental illnesses; and

WHEREAS, the Committee on Protection and Advocacy must balance the rights of persons to privacy and to refuse services with the committee's duties to protect the human and legal rights of persons eligible for services and to monitor facilities for compliance with federal and state laws and rules; and

WHEREAS, the vulnerable adult protective services program provides remedial, social, legal, health, mental health, and referral services that are necessary and appropriate for the prevention, correction, or discontinuance of abuse or neglect of a vulnerable adult; and

WHEREAS, the Department of Human Services and county social service boards are not required to implement or enforce the vulnerable adult protective services program with respect to any region, area, or county of this state if the Legislative Assembly does not provide an appropriation to support the implementation and enforcement of the program within that region, area, or county; and

WHEREAS, a number of other advocacy programs administered by the Department of Human Services have purposes similar to those of the Committee on Protection and Advocacy and the vulnerable adult protective services program; and

WHEREAS, the merging of the various advocacy programs may be one method to improve the effectiveness and efficiency of the programs and may avoid a duplication in services; and

WHEREAS, shared resources may be a method to improve the effectiveness and the efficiency of the programs;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the effectiveness of and methods to improve advocacy programs administered by the Department of Human Services and the feasibility and desirability of merging those advocacy programs, including

the vulnerable adult protective services program, into the protection and advocacy program; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 20, 1997

CHAPTER 641**SENATE CONCURRENT RESOLUTION NO. 4040**

(Senators Schobinger, Grindberg, Krauter, O'Connell, Thane)

PREPAID COLLEGE TUITION STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of implementing a prepaid college tuition program.

WHEREAS, during the 1980s the cost of college tuition rose faster than family income; and

WHEREAS, people became concerned about the future ability of average American families to afford college tuition for their children; and

WHEREAS, by implementing a prepaid college tuition program, people could pay current tuition prices at participating institutions and be guaranteed that their children's tuition would be covered, regardless of how high the costs rose in the future; and

WHEREAS, over 30 states responded to the concern about college affordability by adopting some type of college savings program; and

WHEREAS, the Bank of North Dakota could incorporate the administrative duties of a prepaid college tuition program within its existing obligations; and

WHEREAS, the State Board of Higher Education and the representatives of all universities and colleges under the control of the board have a vested interest in promoting and ensuring the affordability of higher education for the citizens of this state;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of implementing a prepaid college tuition program; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 26, 1997

CHAPTER 642**SENATE CONCURRENT RESOLUTION NO. 4041**

(Senators Lindaas, Thane)
(Representative Aarsvold)

WATERSHED DISTRICT STUDY

A concurrent resolution directing the Legislative Council to study the establishment of watershed districts to manage water based on watershed boundaries.

WHEREAS, the effective management of the state's water resources is essential to the health, prosperity, and general welfare of the citizens of North Dakota; and

WHEREAS, most of the state's existing water resource political subdivisions are based upon political boundaries and not hydrologic boundaries; and

WHEREAS, the state's rivers, streams, and watersheds do not correspond with existing political boundaries; and

WHEREAS, many watershedwide issues such as channel maintenance, upstream drainage, and drain maintenance extend across the boundaries of existing water-related political subdivisions and necessarily require watershedwide or regionwide solutions that smaller water-related political entities are incapable of providing;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the establishment of watershed districts to manage water based on watershed boundaries; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 28, 1997

CHAPTER 643**SENATE CONCURRENT RESOLUTION NO. 4042**

(Senators St. Aubyn, Grindberg, Robinson)
(Representatives R. Kelsch, Kretschmar, Wentz)

**"ABUSE", "NEGLECT", AND "EXPLOITATION"
USAGE STUDY**

A concurrent resolution directing the Legislative Council to study the use of "abuse," and "neglect," and "exploitation" in the North Dakota Century Code.

WHEREAS, the terms "abuse," "neglect," and "exploitation" are not defined consistently throughout the North Dakota Century Code; and

WHEREAS, concerns have been expressed by private developmental disability providers regarding the lack of consistency in the application of the terms to the provider setting; and

WHEREAS, use of those terms should be compared to definitions used by other states and the federal government; and

WHEREAS, a need may exist to establish different grades or levels of severity of each term;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the use of "abuse," "neglect," and "exploitation" in the North Dakota Century Code; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 25, 1997

CHAPTER 644**SENATE CONCURRENT RESOLUTION NO. 4043**

(Senators Fischer, Krebsbach, Nalewaja)
(Representatives Carlson, Skarphol, Wald)

INSURANCE CONSULTANTS PRACTICES STUDY

A concurrent resolution directing the Legislative Council to study the issue of insurance brokers acting as consultants and the public policy of prohibiting insurance consultants from collecting commissions, consulting fees, and policy fees.

WHEREAS, the insurance industry is rapidly evolving as the new millennium approaches; and

WHEREAS, the fashion in which insurance products are being marketed is changing; and

WHEREAS, the commission structure of certain insurance products makes it economically unfeasible to market products to particular markets; and

WHEREAS, although numerous professions in North Dakota are allowed to charge consultant fees during the normal course of business, insurance brokers are prohibited from being paid a consulting fee or policy fee in addition to collecting commission for insurance sold to the same client;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the issue of insurance brokers acting as consultants and the public policy of prohibiting insurance consultants from collecting commissions, consulting fees, or policy fees; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 19, 1997

CHAPTER 645**SENATE CONCURRENT RESOLUTION NO. 4044**

(Senators Kelsh, O'Connell)
(Representative Brandenburg)

AGRICULTURAL LIEN FILING STUDY

A concurrent resolution directing the Legislative Council to study ways of improving the filing of agricultural liens so losses resulting from incomplete or inaccurate information can be reduced.

WHEREAS, the central filing system was designed to reduce the number of filings required to gain a perfected security interest; and

WHEREAS, the central filing system was designed to provide easy and widespread access to lien and security information; and

WHEREAS, losses are occasionally suffered when not all liens and security information are accessed;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study ways of improving the filing of agricultural liens so losses resulting from incomplete or inaccurate information can be reduced; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 25, 1997

CHAPTER 646**SENATE CONCURRENT RESOLUTION NO. 4045**

(Senator W. Stenehjem)
(Representative Kretschmar)

DISTRICT COURT AND CLERK STUDY

A concurrent resolution directing the Legislative Council to study state funding of the office of clerk of district court, the issues and problems associated with the continued implementation of court unification, and the effective provision of judicial services to the citizens of this state.

WHEREAS, since 1981, the judicial system has evolved through a series of consolidation refinements culminating in 1991 legislation abolishing county courts, establishing a single level trial court system, and requiring the reduction in total number of judges to 42 by January 2, 2001; and

WHEREAS, clerks of district court are an integral part of the court system but their status as elected county officials poses unique and significant issues concerning the effective operation of the courts in providing judicial services; and

WHEREAS, continued implementation of court unification requires substantive review of issues concerning the means of effectively providing judicial services with reduced judicial resources, including the location of judicial services, facility standards for courthouses, continued refinement of venue requirements, and methods of juror selection; and

WHEREAS, complex issues concerning state funding of the office of clerk of district court and continued implementation of court unification and the impact upon counties, the courts, and judicial services provided to North Dakota citizens are most proficiently considered by a body with the reservoir of knowledge about the issues and reflecting the diverse interests, needs, and allegiances of those affected by those issues;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study state funding of the office of clerk of district court, the issues and problems associated with the continued implementation of court unification, and the effective provision of judicial services to the citizens of this state; and

BE IT FURTHER RESOLVED, that the Legislative Council consider including representatives of clerks of court, county commissioners, and judges on the interim committee; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 25, 1997

CHAPTER 647**SENATE CONCURRENT RESOLUTION NO. 4046**

(Senators Holmberg, Freborg, Goetz, Nething, Redlin, Robinson)

VOCATIONAL AND TECHNICAL EDUCATION STUDY

A concurrent resolution directing the Legislative Council to study the role of the State Board for Vocational and Technical Education in work force training and retraining, to determine whether the current organizational structure of the board is adequate to ensure continued leadership in readying the state's citizens for a globally competitive marketplace, and to determine the adequacy of funding for the board and for vocational and technical education in this state.

WHEREAS, it is the mission of the State Board for Vocational and Technical Education to work with representatives of the State Board for Higher Education, Job Service North Dakota, the Department of Economic Development and Finance, the Superintendent of Public Instruction, the Work Force Development Council, and the Department of Human Services to provide the citizens of this state with the technical skills, knowledge, and attitudes necessary for successful performance in a globally competitive marketplace; and

WHEREAS, it is the mission of the State Board for Vocational and Technical Education to work with representatives of the private sector to create a responsive and flexible work force that is capable of meeting the short-term and long-term needs of business and industry in this state; and

WHEREAS, it is the mission of the State Board for Vocational and Technical Education to provide leadership and quality services designed to stimulate and support economic growth and diversity in this state;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the role of the State Board for Vocational and Technical Education in work force training and retraining, to determine whether the current organizational structure of the board is adequate to ensure continued leadership in readying the state's citizens for a globally competitive marketplace, and to determine the adequacy of funding for the board and for vocational and technical education in this state; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 26, 1997

CHAPTER 648**SENATE CONCURRENT RESOLUTION NO. 4047**

(Senators Holmberg, Freborg, O'Connell, Wanzek)
(Representative R. Kelsch)

FEDERAL EDUCATION LEGISLATION IMPACT STUDY

A concurrent resolution directing the Legislative Council to study the short-term and long-term impact of federal education legislation, and other direct and indirect mandates from whatever sources, on the educational goals and fiscal well-being of school districts.

WHEREAS, the Constitution of North Dakota provides that the Legislative Assembly shall provide for "the establishment and maintenance of a system of public schools which shall be open to all children of the state"; and

WHEREAS, the Constitution of North Dakota provides that the Legislative Assembly shall take "steps as may be necessary to prevent illiteracy, secure a reasonable degree of uniformity in course of study, and to promote industrial, scientific, and agricultural improvements"; and

WHEREAS, the enactment of federal legislation such as the Goals 2000: Educate America Act, the School-to-Work Opportunities Act, the Elementary and Secondary Education Act, the Rehabilitation Act, the Safe Schools Act, the Refugee Assistance Act, and the Individuals with Disabilities Education Act, among others, together with the development of state accreditation standards, has significantly impacted the ability of local school districts to determine a course of education and to deliver a course of education to their students;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the short-term and long-term impact of federal education legislation, and other direct and indirect mandates from whatever sources, on the educational goals and fiscal well-being of school districts; and

BE IT FURTHER RESOLVED, that the Legislative Council appoint a committee having broad-based representation among urban and rural and small, medium, and large school districts to pursue this study; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 26, 1997

CHAPTER 649**SENATE CONCURRENT RESOLUTION NO. 4048**

(Senator W. Stenehjem)
(Representatives Christenson, Price)

DIVORCE ISSUES STUDY

A concurrent resolution directing the Legislative Council to study the interrelationship of the postjudgment issues of child support and visitation, including the accountability of both parents to honor divorce orders and the development of a parenting education program that addresses the impact of divorce on children.

WHEREAS, nationwide, there are more than one million children each year whose parents are involved in divorce proceedings; and

WHEREAS, research indicates that children of divorcing couples are at a greater risk than children in two-parent families for a range of problems, from depression to poor grades to substance abuse; and

WHEREAS, at least 10 states, including Iowa and Illinois, have enacted legislation that provides for either voluntary or mandated education programs for divorcing parents; and

WHEREAS, each child has a right to be guided, nurtured, and supported emotionally, physically, and financially by both parents regardless of the parents' marital status; and

WHEREAS, concerns have been expressed that there are inequities in the enforcement of visitation orders and child support obligations;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the interrelationship of the postjudgment issues of child support and visitation, including the accountability of both parents to honor divorce orders and the development of a parenting education program that addresses the impact of divorce on children; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 25, 1997

CHAPTER 650**SENATE CONCURRENT RESOLUTION NO. 4049**

(Senators W. Stenehjem, Nalewaja, Watne)
(Representatives R. Kelsch, Kretschmar, Stenehjem)

SEXUAL OFFENSE LAWS STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of revising the sections of the North Dakota Century Code which relate to sexual offenses.

WHEREAS, it is a legislative responsibility to review existing laws to ensure that they address the problems they are intended to rectify; and

WHEREAS, the Fifty-fifth Legislative Assembly consider at least 10 measures relating to sexual offenders; and

WHEREAS, the sexual offense statutes are interrelated and sometimes a change in one section necessitates a reevaluation of other sections;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of revising the sections of the North Dakota Century Code which relate to sexual offenses; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 25, 1997

CHAPTER 651**SENATE CONCURRENT RESOLUTION NO. 4050**

(Senators G. Nelson, Mathern)
(Representatives Dorso, Boucher)

LIGNITE INDUSTRY TAX AND REGULATION STUDY

A concurrent resolution directing the Legislative Council to study taxation and regulatory incentives for the lignite industry in order to improve its competitive position in the energy marketplace.

WHEREAS, North Dakota's lignite industry produces approximately thirty million tons of lignite annually, contributing to our state's and nation's energy independence by generating electricity for more than two million people in the northern great plains region and by producing synthetic natural gas from coal that heats 300,000 homes and businesses in eastern states, which is equivalent to over 20,000 barrels of oil per day; and

WHEREAS, North Dakota's lignite industry generates over 20,000 direct and indirect jobs for North Dakota, over one billion dollars in annual business volume, and over sixty-five million dollars in annual tax revenue; and

WHEREAS, the Legislative Assembly has previously determined that it is an essential governmental function and public purpose to assist with the development and wise use of North Dakota's vast lignite resources by supporting a lignite research, development, and marketing program; and

WHEREAS, the Gascoyne Mine recently closed due to the loss of its contract due to out-of-state coal competition; and

WHEREAS, subbituminous coal is presently being test burned in two North Dakota coal generating facilities; and

WHEREAS, with deregulation and restructuring within the electrical industry, there are increasing competitive pressures on the lignite industry; and

WHEREAS, government taxation and regulatory costs constitute up to thirty percent of the cost of North Dakota lignite; and

WHEREAS, North Dakotans desire to maintain their state's status as one of only a few clean air states and as a state with an equitable tax structure;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of providing taxation incentives and eliminating unnecessary regulatory burdens in order to make the lignite industry more competitive in order to protect and enhance the jobs and economic activity associated with the development of the state's abundant state lignite resource, while at the same time maintaining a clean and healthy environment for all of our state's citizens; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 25, 1997

CHAPTER 652**SENATE CONCURRENT RESOLUTION NO. 4051**

(Senators Solberg, Christmann)

SCHOOL CORE CURRICULUM STUDY

A concurrent resolution directing the Legislative Council to study the desirability of requiring that a core curriculum be taught from kindergarten through grade 12; and if determined to be desirable, to develop a core curriculum or endorse an existing core curriculum for delivery to each North Dakota school child, regardless of where the child resides; and to determine the desirability and feasibility of requiring the state to assume all costs of delivering that core curriculum to each North Dakota school child.

WHEREAS, the Constitution of North Dakota states that the Legislative Assembly is to provide for "the establishment and maintenance of a system of public schools which shall be open to all children of the state"; and

WHEREAS, the Constitution of North Dakota states that the Legislative Assembly shall take "steps as may be necessary to prevent illiteracy, secure a reasonable degree of uniformity in course of study, and to promote industrial, scientific, and agricultural improvements"; and

WHEREAS, the Legislative Assembly believes that each North Dakota school child should be challenged academically in, at the very least, the disciplines of mathematics, science, English, history, geography, music, art, and physical education, regardless of where in the state the child resides;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the desirability of requiring that a core curriculum be taught from kindergarten through grade 12; and if determined to be desirable, to develop a core curriculum or endorse an existing core curriculum for delivery to each North Dakota school child, regardless of where the child resides; and to determine the desirability and feasibility of requiring the state to assume all costs of delivering that core curriculum to each North Dakota school child; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 26, 1997

CHAPTER 653**SENATE CONCURRENT RESOLUTION NO. 4052**

(Senators Andrist, Naaden, Solberg)
(Representatives Huether, Kempenich)

OCCUPATIONAL LICENSING PRIVATIZATION STUDY

A concurrent resolution directing the Legislative Council to study occupational and professional licensing entities with an emphasis on methods to privatize licensing entities.

WHEREAS, during the 1995-96 interim, the Legislative Council conducted a comprehensive study of all boards, committees, commissions, and councils of state government; and

WHEREAS, because of the large scope of that study, the interim committee was unable to fully research areas in which other states are attempting to consolidate or eliminate occupational and professional licensing entities; and

WHEREAS, there are approximately 40 occupational and professional licensing entities for which the Legislative Assembly has oversight and legal responsibility; and

WHEREAS, other states are attempting to address the problem of the growing number of state licensing entities through privatization of those entities; and

WHEREAS, a number of occupational and professional licensing entities in this state have demonstrated an interest in working with establishing models of privatization of licensing functions;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study occupational and professional licensing entities with an emphasis on methods to privatize licensing entities; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 20, 1997

CHAPTER 654**SENATE CONCURRENT RESOLUTION NO. 4053**

(Senators LaFountain, Nalewaja, Robinson)

JUVENILE CRIME DISPOSITION STUDY

A concurrent resolution directing the Legislative Council to study the prevention of and dispositional alternatives to juvenile crime with a focus on services offered to American Indian children.

WHEREAS, according to 1992 statistics, American Indian children represent seven percent of all the children in North Dakota, but represent 28 percent of the children in juvenile detention and 36 percent of the admissions to the North Dakota Youth Correctional Center; and

WHEREAS, dispositional alternatives to admission to the North Dakota Youth Correctional Center include community service, employment, education, self-help groups, drug and alcohol testing and treatment, house arrest, electronic monitoring, curfew, and supervision sessions; and

WHEREAS, there are special problems concerning delinquency in the rural and tribal areas of this state; and

WHEREAS, there is a need to identify and treat the problems of juveniles that enter the juvenile justice system;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the prevention of and dispositional alternatives to juvenile crime with a focus on services offered to American Indian children; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 25, 1997

CHAPTER 655**SENATE CONCURRENT RESOLUTION NO. 4054**

(Senators DeMers, Fischer, Thane, Yockim)

ASSISTIVE TECHNOLOGY REIMBURSEMENT STUDY

A concurrent resolution directing the Legislative Council to study whether the Department of Human Services should reimburse qualified service providers who provide assistive technology devices and services to individuals with disabilities.

WHEREAS, an assistive technology device is any item or system used to increase, maintain, or improve the functional capabilities of individuals with disabilities to perform tasks such as communicating, speaking, seeing, hearing, maneuvering, moving, walking, standing, reaching, grasping, working, sleeping, learning, or caring for themselves; and

WHEREAS, an assistive technology service is any service that directly assists individuals with disabilities in selecting or using assistive technology devices and includes evaluating the needs of individuals with disabilities; coordinating and employing other therapies or services with assistive technology devices; and training or technical assistance; and

WHEREAS, a qualified service provider is a county agency or an independent contractor who agrees to meet standards for service and operations established by the Department of Human Services;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study whether the Department of Human Services should reimburse qualified service providers who provide assistive technology devices and services to individuals with disabilities; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 20, 1997

CHAPTER 656**SENATE CONCURRENT RESOLUTION NO. 4055**

(Senator Andrist)
(Political Subdivisions Committee)

EXTENDED AREA TELECOMMUNICATIONS STUDY

A concurrent resolution directing the Legislative Council to study the potential for expansion of extended area telecommunications service.

WHEREAS, rural communities and schools in those communities are frequently restrained by the lack of toll-free telephone lines used for Internet access; and

WHEREAS, there appears to be a shortage of extended area service opportunities to residents in rural areas; and

WHEREAS, the loss of businesses and services in rural communities makes rural residents ever more dependent on long-distance service to communicate for their essential needs; and

WHEREAS, an alternative to current service is a tiered system providing add-ons to basic telephone service;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the potential for expansion of extended area telecommunications service; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 25, 1997

CHAPTER 657**SENATE CONCURRENT RESOLUTION NO. 4057**

(Senators G. Nelson, Mathern)
(Representatives Dorso, Boucher)
(Approved by the Delayed Bills Committee)

GARRISON DIVERSION COMPLETION URGED

A concurrent resolution urging Congress to complete the Garrison Diversion project, to provide water for eastern North Dakota, and to meet the other water needs of the state.

WHEREAS, North Dakota lost more than 500,000 acres of valuable river bottomlands as a result of construction of the Missouri River reservoirs under the federal Flood Control Act of 1944, causing an annual loss of millions of dollars in economic gross product and an additional annual loss in personal income as well as other serious impacts to individuals, political subdivisions, and North Dakota's Indian Nations; and

WHEREAS, operation of the Pick-Sloan Missouri River dams has caused extensive damage and erosion to the remaining river banks and sediment buildup in areas of the upper reaches of the Oahe and Garrison reservoirs; and

WHEREAS, North Dakota was assured by Congress in the Flood Control Act of 1944 that the loss of this valuable land and economic return would be offset by completion of the Garrison Diversion Unit; and

WHEREAS, project benefits to date have not fully realized the promise of Garrison diversion; and

WHEREAS, construction of Garrison diversion by the federal government has been delayed numerous times with construction costs increasing and the remaining benefits deferred with each delay; and

WHEREAS, the Red River Basin needs a dependable supply of water for the cities of Fargo and Grand Forks, smaller communities, rural water systems, industry, agricultural processing, manufacturing, and other purposes, including minimum flows, and to protect and enhance the economic stability and quality of life for the growing population of the Red River Basin; and

WHEREAS, North Dakota has tremendous potential to produce irrigated high-value nonsurplus crops, and a dependable water supply for the James River is necessary for the Oakes test area and to realize the incredible economic opportunity to produce onions, potatoes, vegetables, and other high-value crops under irrigation; and

WHEREAS, the short-term solution to Devils Lake flooding includes an emergency outlet, upper basin storage and infrastructure protection, and the long-term solution to Devils Lake water management includes an inlet and outlet facility, upper basin storage, and infrastructure protection as parts of a stabilization plan to protect against periods of flooding and drought; and

WHEREAS, communities and rural water systems across North Dakota need a clean dependable water supply to preserve the quality of life in rural North Dakota; with such supplies being provided by projects such as the Southwest Pipeline Project and the Northwest Area Water Supply as well as other systems now being developed to meet water supply needs; and

WHEREAS, Missouri River water, delivered to eastern North Dakota via the Sheyenne River, provides the best practical solution to bring a dependable and adequate water supply to satisfy the growing water needs of the Red River Basin, the James River, Devils Lake, and other areas for the long-term future; and

WHEREAS, most North Dakotans will benefit from ensuring an adequate water supply to areas of need; and

WHEREAS, failure to provide long-term water supply and management for the Red River Basin, the James River, Devils Lake, and other areas will jeopardize future economic opportunities dependent on water, including industry, agricultural processing, manufacturing, municipal growth, recreation and fish and wildlife, and will adversely affect the entire state of North Dakota;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That construction and completion of a federally funded Garrison Diversion is a critical priority for water supply, management, and development in the State of North Dakota; and

BE IT FURTHER RESOLVED, that the State of North Dakota is prepared to assume responsibility for planning, constructing, operating, and maintaining the Garrison principal water supply facilities; and

BE IT FURTHER RESOLVED, that establishment of an economic recovery water fund would advance municipal, rural, agriculture, industry, tourism, recreation, wildlife, aesthetics, and other water-related economic development projects; and

BE IT FURTHER RESOLVED, that the Legislative Assembly urges the Governor, the members of the Congressional delegation, and legislative leaders to work together in ongoing negotiations with other interested parties to reach consensus on legislation to complete the Garrison Diversion project and thereby achieve the goal of long-term future water supply for the Red River Basin; the James River; Devils Lake; Northwest Area Water Supply; the Southwest Pipeline; community water supply systems; rural water systems; Indian municipal, rural, and industrial water supply systems, and other areas, and to establish or enhance resources, wildlife, and water funds to assist in the development and completion of the Garrison Diversion Unit; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Governor, each member of the North Dakota Congressional Delegation, and the United States Secretary of the Interior.

Filed March 28, 1997

CHAPTER 658**SENATE CONCURRENT RESOLUTION NO. 4058**

(Senators Traynor, G. Nelson, Mathern, Thompson)

(Representatives Dorso, Boucher)

(Approved by the Delayed Bills Committee)

DEVILS LAKE OUTLET CONSTRUCTION URGED

A concurrent resolution expressing the consensus of the Legislative Assembly and urging the United States Army Corps of Engineers to design and construct the emergency outlet for Devils Lake.

WHEREAS, the primary and most critical water management problem in the Devils Lake Basin is the flooding of Devils Lake; and

WHEREAS, this flooding is causing economic, social, and other hardships to the citizens of the Devils Lake Basin; and

WHEREAS, the fifth year of flooding is causing critical impacts to all resources, creating an emergency; and

WHEREAS, the Governor has declared that an emergency due to the disastrous flooding conditions exists within the State of North Dakota; and

WHEREAS, the state has initiated an emergency response plan which includes infrastructure preservation, upper basin water storage, and an outlet; and

WHEREAS, the United States Army Corps of Engineers has announced, in a plan dated August 12, 1996, an emergency outlet to reduce the flooding problems at Devils Lake; and

WHEREAS, this plan was developed after consideration of a number of criteria, including engineering feasibility, availability of information, relative effectiveness, views of the Spirit Lake Nation, costs, environmental impacts, downstream concerns, and construction time; and

WHEREAS, more than a dozen meetings were held within the Devils Lake Basin and downstream along the Sheyenne and Red Rivers during the fall of 1996 to gather public comment and questions about the United States Army Corps of Engineers' plan; and

WHEREAS, the United States Army Corps of Engineers' plan, after broad review, is judged to offer the best balance among the above criteria and consists of pumping Devils Lake water over the divide between Devils Lake and the Sheyenne River via the Twin Lakes outlet route; and

WHEREAS, in order to move forward the United States Army Corps of Engineers requires consensus on the part of state and local political leaders for this project; and

WHEREAS, the state is committed to a comprehensive solution to this flood emergency situation, including infrastructure preservation and restoration, upper basin water storage, and an outlet;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-fifth Legislative Assembly has reached consensus and approves of and urges the United States Army Corps of Engineers to move forward with the design and construction of the Twin Lakes Devils Lake outlet or the Peterson Coulee outlet; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Assistant Secretary of the United States Army for Civil Works and to each member of the North Dakota Congressional Delegation.

Filed March 28, 1997

CHAPTER 659**SENATE CONCURRENT RESOLUTION NO. 4059**

(Senator Sand)

(Representatives Monson, Olson)

(Approved by the Delayed Bills Committee)

DISHER RINK CONGRATULATED

A concurrent resolution congratulating the Disher Rink curling team on winning the 1997 United States men's curling national championship.

WHEREAS, the Disher Rink curling team is composed of Craig Disher, Hansboro; Kevin Kakela, Rolla; Joel Jacobson, Langdon; and Paul Peterson, Langdon; and

WHEREAS, after placing second in 1994 and third in 1995 this team, representing North Dakota and the Langdon Curling Club, came on strong at the end to win the 41st United States men's national championship; and

WHEREAS, the Disher Rink team from Langdon will enjoy the title of Team USA for the next year; and

WHEREAS, Team USA will now advance to the world curling championships to be held in Berne, Switzerland, April 12-20, 1997; and

WHEREAS, in addition to the world championships in Berne, this team has earned a berth into the United States Olympic trials to be held December 10-14, 1997, in Duluth, Minnesota, to compete with the top six teams in the United States for the sole right to represent the United States in the 1998 Winter Olympics in Nagano, Japan, where curling will be a full medal sport for the first time;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-fifth Legislative Assembly extends to all members of the Disher Rink team its heartiest congratulations for winning the 1997 United States men's curling national championship; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to each member of the Disher Rink team.

Filed April 2, 1997

CHAPTER 660**SENATE CONCURRENT RESOLUTION NO. 4060**

(Senators G. Nelson, Mathern)
(Representatives Dorso, Boucher)
(Approved by the Delayed Bills Committee)

DOCTOR OF THE DAY PROGRAM APPRECIATION

A concurrent resolution expressing the thanks and appreciation of the Fifty-fifth Legislative Assembly to the North Dakota Medical Association doctor of the day program.

WHEREAS, many practicing physicians from throughout the state, as well as resident physicians from the University of North Dakota School of Medicine family medicine residency programs in Minot, Grand Forks, Fargo, and Bismarck, have volunteered their services as the doctor of the day during the fifty-fifth legislative session; and

WHEREAS, many legislators, legislative employees, family members, lobbyists, and visitors to the Capitol have received treatment, counseling, and medications at no charge; and

WHEREAS, the North Dakota Medical Association, the Bismarck Family Practice Center, local pharmacies and pharmaceutical manufacturers, Mid Dakota Clinic, and Medcenter One Health Systems have all provided services, equipment, or supplies to the doctor of the day medical services room;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That thanks and appreciation be expressed to the physicians and health care groups who have volunteered their professional services, expertise, supplies, and equipment in the operation of the 1997 North Dakota Medical Association doctor of the day program.

Filed April 2, 1997

CHAPTER 661**SENATE CONCURRENT RESOLUTION NO. 4061**

(Senators W. Stenehjem, Holmberg, DeMers, Mutch, St. Aubyn)
(Representatives Kliniske, Poolman, Jensen, Svedjan, Christenson,
Glasheim, Brusegaard, Lloyd, Delmore, Nottestad)
(Approved by the Delayed Bills Committee)

SIoux WOMEN'S BASKETBALL CONGRATULATIONS

A concurrent resolution congratulating the University of North Dakota Fighting Sioux women's basketball team for winning the 1997 NCAA Division II national championship.

WHEREAS, the University of North Dakota Fighting Sioux women's basketball team captured its first-ever NCAA Division II championship and capped its postseason play with a 94-78 championship victory at Hyslop Sports Center in Grand Forks; and

WHEREAS, the Fighting Sioux women's basketball team tied its season record of 28 victories and for the eighth consecutive season won more than 20 games under the leadership of Coach Gene Roebuck; and

WHEREAS, Jaime Pudenz, named most outstanding player of the Division II Elite Eight tournament, Kelli Britz, and Jenny Crouse, named to the all-tournament team, and the other talented individual athletes distinguished themselves under the guidance of Coach Roebuck and assistant coaches Darcy Deutsch, Chris Gardner, and Doug Reiten by displaying explosive offense, tenacious defense, and exemplary teamwork in realizing their goal of a national championship, a performance of which North Dakotans are extremely proud;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-fifth Legislative Assembly takes pride in extending to all members and coaches of the University of North Dakota Fighting Sioux women's basketball team its heartiest congratulations for winning the 1997 NCAA Division II women's national basketball championship; and

BE IT FURTHER RESOLVED, that the Secretary of State forward enrolled copies of this resolution to each member of the University of North Dakota Fighting Sioux women's basketball team, to each of their coaches, and to the president of the University of North Dakota, home of the Fighting Sioux.

Filed April 2, 1997

CHAPTER 662**SENATE CONCURRENT RESOLUTION NO. 4062**

(Senators W. Stenehjem, Holmberg, DeMers, Mutch, St. Aubyn)
(Representatives Kliniske, Poolman, Jensen, Svedjan, Christenson,
Glassheim, Brusegaard, Lloyd, Delmore, Nottestad)
(Approved by the Delayed Bills Committee)

SIoux HOCKEY CONGRATULATIONS

A concurrent resolution congratulating the University of North Dakota Fighting Sioux hockey team for its outstanding season and its NCAA Division I hockey national championship.

WHEREAS, the University of North Dakota Fighting Sioux hockey team captured the NCAA Division I hockey national championship with a thrilling 6-4 victory over Boston University; and

WHEREAS, the 1996-97 University of North Dakota Fighting Sioux hockey team was co-champion of the Western Collegiate Hockey Association regular season, playoff champion of the Western Collegiate Hockey Association, and the NCAA Division I hockey national champion; and

WHEREAS, the leadership of Coach Dean Blais molded a team of outstanding individual athletes into a cohesive, unselfish team with balanced and explosive offense, unyielding defense, and stalwart goaltending and this team is an exemplar of the proud Fighting Sioux hockey heritage and claimed the sixth Fighting Sioux hockey national championship;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-fifth Legislative Assembly takes great pride in extending to all members and coaches of the University of North Dakota Fighting Sioux hockey team its heartiest congratulations for winning the 1996-97 NCAA Division I hockey national championship; and

BE IT FURTHER RESOLVED, that the Secretary of State forward enrolled copies of this resolution to each member of the University of North Dakota Fighting Sioux hockey team, to each of their coaches, and to the President of the University of North Dakota, home of the Fighting Sioux.

Filed April 10, 1997

CHAPTER 663**SENATE CONCURRENT RESOLUTION NO. 4063**

(Senators G. Nelson, Mathern)
(Representatives Dorso, Boucher)
(Approved by the Delayed Bills Committee)

**NORTHERN GREAT PLAINS RESEARCH FUNDING
URGED**

A concurrent resolution urging Congress to continue to fund the Northern Great Plains Research Laboratory.

WHEREAS, the Northern Great Plains Research Laboratory was founded in 1912 and operates on a budget of \$2.6 million; and

WHEREAS, the Northern Great Plains Research Laboratory supports North Dakota and Northern Great Plains agriculture through an integrated program that combines soil and crop management and conservation, irrigation and water management, forage and grassland management, and forage improvement; and

WHEREAS, the Northern Great Plains Research Laboratory has virtually unparalleled facilities, both in terms of land resources and in terms of the combination of different soil, plant, and animal science specializations; and

WHEREAS, the Northern Great Plains Research Laboratory has generated critical research findings regarding the conversion of conservation reserve program land to cropland; and

WHEREAS, the Northern Great Plains Research Laboratory has generated critical research findings regarding the importance of shelterbelts to agriculture in the Northern Great Plains states and the viability and hardiness of certain tree varieties for use as shelterbelts; and

WHEREAS, the President's fiscal year 1998 budget proposes an appropriation of \$726.8 million for the Agricultural Research Service, and spending proposed for certain programs within the service necessitates the termination of other research programs and the closure of research facilities, including the Northern Great Plains Research Laboratory; and

WHEREAS, the continued funding of the Northern Great Plains Research Laboratory is necessary to ensure both the continued viability of North Dakota agriculture and sustainable food production in the future;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-fifth Legislative Assembly urges Congress to continue to fund the Northern Great Plains Research Laboratory; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the President of the United States, the Secretary of Agriculture, and to each member of the North Dakota Congressional Delegation.

Filed April 10, 1997

SENATE RESOLUTION

CHAPTER 664

SENATE RESOLUTION NO. 6001

(Senators Mathern, G. Nelson, Holmberg, Lips, Redlin, Yockim)

(Approved by the Delayed Bills Committee)

HARVEY D. TALLACKSON CONGRATULATIONS

A resolution congratulating Senator Harvey D. Tallackson of the 16th legislative district on his election to the position of 1997 president of the National Conference of Insurance Legislators.

WHEREAS, the National Conference of Insurance Legislators was founded by legislators from 17 states in 1969; and

WHEREAS, the National Conference of Insurance Legislators advances the knowledge and effectiveness of legislators and legislatures when dealing with matters relating to insurance law and participates in the formulation of model legislation for the resolution of insurance problems by the states on a state-by-state basis; and

WHEREAS, Senator Harvey D. Tallackson has served as a member of the North Dakota Senate since 1977; and

WHEREAS, Senator Harvey D. Tallackson has served as chairman of several standing and interim committees covering a wide scope of issues, including the 1983-84 interim Insurance Code Revision Committee, which completed the first modern revision of the state's insurance laws; and

WHEREAS, Senator Harvey D. Tallackson has been elected the 1997 president of the National Conference of Insurance Legislators;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA:

That the Senate extends to Senator Harvey D. Tallackson its heartiest congratulations for being elected the 1997 president of the National Conference of Insurance Legislators; and

BE IT FURTHER RESOLVED, that this resolution be entered in the journal and the President of the Senate present an enrolled copy to Senator Harvey D. Tallackson.

Filed March 18, 1997

HOUSE MEMORIAL RESOLUTION

CHAPTER 665

HOUSE MEMORIAL RESOLUTION NO. 7001

(Memorial Resolutions Committee)

HOUSE MEMBERS MEMORIAL

A memorial resolution for deceased members of the House of Representatives of North Dakota.

WHEREAS, God has summoned to eternal rest our former colleagues:

Anson J. Anderson, who served in the 31st through the 33rd Legislative Assemblies, from District 14, died March 10, 1996;

L. E. Berger, who served in the 44th and 45th Legislative Assemblies, from District 21, and in the 46th and 47th Legislative Assemblies, from District 13, died January 2, 1997;

L. D. "Lee" Christensen, who served in the 37th through the 39th Legislative Assemblies, from District 2, died November 9, 1996;

Vernon G. Dagman, who served in the 37th and 38th Legislative Assemblies, from District 14, died February 18, 1992;

Lawrence Dick, who served in the 34th through the 39th Legislative Assemblies, from District 14, and in the 40th through the 47th Legislative Assemblies, from District 27, died August 15, 1996;

Howard F. Doherty, who served in the 35th and 36th Legislative Assemblies, from District 48, died November 8, 1996;

Eldred N. Dornacker, who served in the 38th and 39th Legislative Assemblies, from District 8, and in the 40th through the 43rd Legislative Assemblies, from District 20, died March 3, 1995;

LeRoy Erickson, who served in the 40th and the 43rd through the 46th Legislative Assemblies, from District 26, died January 14, 1997;

Leonell "Lee" W. Fraase, who served in the 37th Legislative Assembly, from District 45, died May 12, 1996;

Robert E. Grant, who served in the 41st and 42nd Legislative Assemblies, from District 4, died February 3, 1997;

Edward "Ed" Gudajtes, who served in the 39th Legislative Assembly, from District 4, died January 22, 1997;

Andrew "Andy" Hagle, who served in the 53rd and 54th Legislative Assemblies, from District 23, died March 19, 1996;

Walter "Walt" Hjelle, who served in the 36th Legislative Assembly, from District 46, and in the 48th Legislative Assembly, from District 49, died July 4, 1996;

Peter "Pete" Hornstein, who served in the 35th through the 37th Legislative Assemblies, from District 42, died April 14, 1996;

Vernon M. Johnson, who served in the 27th through the 30th Legislative Assemblies, from District 12, died June 12, 1996;

H. Kent Jones, who served in the 40th and 41st Legislative Assemblies, from District 15, died December 17, 1995;

Marjorie Kermott, who served in the 43rd through the 46th Legislative Assemblies, from District 5, died January 17, 1997;

Kevin Kolbo, who served in the 50th through the 52nd Legislative Assemblies, from District 3, died July 3, 1996;

Harold Langseth, who served in the 32nd Legislative Assembly, from District 37, died August 15, 1996;

Ernest C. Livingston, who served in the 32nd Legislative Assembly, from District 29, died July 26, 1995;

Clarence Martin, who served in the 44th through the 52nd Legislative Assemblies, from District 38, and in the 53rd through the 55th Legislative Assemblies, from District 36, died February 9, 1997;

John McGauvran, who served in the 42nd through the 45th Legislative Assemblies, from District 10, died May 18, 1995;

Raymond J. McLain, who served in the 33rd and 34th Legislative Assemblies, from District 43, died March 10, 1996;

Catherine "Kit" Scherber, who served in the 50th through the 52nd Legislative Assemblies, from District 44, died November 12, 1995;

Fred T. Schmidt, who served in the 26th and 27th Legislative Assemblies, from District 34, died June 15, 1996;

Harry Semerad, who served in the 25th through the 27th Legislative Assemblies and in the 30th Legislative Assembly, from District 48, died April 21, 1995;

E. Odin Sjaastad, who served in the 35th through the 37th Legislative Assemblies, from District 44, died May 24, 1996;

William "Bill" C. Skjerven, who served in the 49th through the 52nd Legislative Assemblies, from District 16, died October 12, 1996;

Oscar Solberg, who served in the 31st through the 34th and in the 36th through the 39th Legislative Assemblies, from District 19, and in the 40th through the 49th Legislative Assemblies, from District 9, died November 20, 1996;

Albert L. Ulvedal, who served in the 42nd Legislative Assembly, from District 18, died July 10, 1995;

George Unruh, who served in the 39th Legislative Assembly, from District 7, and in the 40th Legislative Assembly, from District 18, died January 4, 1997;

Gilman Wastvedt, who served in the 37th through the 39th Legislative Assemblies, from District 8, died November 28, 1996; and

WHEREAS, we now pause to mourn the passing of our former House colleagues and to honor their memories; and

WHEREAS, these legislators rendered outstanding service to the people of the state by their contributions to public service;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA:

That we express our sorrow on their passing and our appreciation, on behalf of the people of North Dakota, of the loyal and devoted service of our former colleagues; and

BE IT FURTHER RESOLVED, that for the perpetuation of their memory this token of respect and sympathy by their successors in trust be printed in the Journal of the House of Representatives and that the Secretary of State present enrolled copies of this resolution to the surviving families of these deceased representatives.

Filed March 11, 1997

SENATE MEMORIAL RESOLUTION

CHAPTER 666

SENATE MEMORIAL RESOLUTION NO. 8001

(Memorial Resolutions Committee)

SENATE MEMBERS MEMORIAL

A memorial resolution for deceased members of the Senate of North Dakota.

WHEREAS, God has summoned to eternal rest our former colleagues:

L. D. "Lee" Christensen, who served in the 40th through the 44th Legislative Assemblies, from District 3, died November 9, 1996;

LeRoy Erickson, who served in the 47th and 48th Legislative Assemblies, from District 26, died January 14, 1997;

J. L. "Mike" Flatt, who served in the 26th through the 31st Legislative Assemblies, from District 14, died April 21, 1995;

H. Kent Jones, who served in the 42nd through the 46th Legislative Assemblies, from District 15, died December 17, 1995;

Earl M. Kelly, who served in the 39th Legislative Assembly, from District 15, and in the 40th, 49th, and 50th Legislative Assemblies, from District 24, died April 19, 1996;

Ernest C. Livingston, who served in the 33rd through the 36th Legislative Assemblies, from District 29, died July 26, 1995;

Catherine "Kit" Scherber, who served in the 53rd and 54th Legislative Assemblies, from District 44, died November 12, 1995;

Harry Semerad, who served in the 28th and 29th Legislative Assemblies, from District 48, died April 21, 1995;

Gilman Strand, who served in the 43rd through the 46th Legislative Assemblies, from District 20, died June 8, 1996;

George Unruh, who served in the 41st and 42nd Legislative Assemblies, from District 18, died January 4, 1997; and

WHEREAS, we now pause to mourn the passing of our former Senate colleagues and to honor their memories; and

WHEREAS, these legislators rendered outstanding service to the people of the state by their contributions to public service;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA:

That we express our sorrow on their passing and our appreciation, on behalf of the people of North Dakota, of the loyal and devoted service of our former colleagues; and

BE IT FURTHER RESOLVED, that for the perpetuation of their memory this token of respect and sympathy by their successors in trust be printed in the Journal of the Senate and that the Secretary of State present enrolled copies of this resolution to the surviving families of these deceased senators.

Filed March 18, 1997