HEALTH AND SAFETY

CHAPTER 231

SENATE BILL NO. 2109

(Senators Thane, DeMers)
(Representatives Rose, Weisz)
(At the request of the State Department of Health)

TRAUMATIC HEAD INJURY REGISTRY ELIMINATED

AN ACT to repeal sections 23-01-20 and 23-01-21 of the North Dakota Century Code, relating to the traumatic head injury registry; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 23-01-20 of the North Dakota Century Code and section 23-01-21 of the 1997 Supplement to the North Dakota Century Code are repealed.

SECTION 2. APPLICATION OF ACT. This Act does not affect the confidentiality of any record received or created under former sections 23-01-20 and 23-01-21.

Approved March 3, 1999
Filed March 4, 1999

CHAPTER 232

SENATE BILL NO. 2166

(Senators DeMers, Kilzer, Lee)
(At the request of the State Department of Health)

HEALTH INFORMATION DISCLOSURE

AN ACT to create and enact chapter 23-01.3 and a new section to chapter 23-17.3 of the North Dakota Century Code, relating to confidential or protected health information in possession of a public health authority; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 23-01.3 of the North Dakota Century Code is created and enacted as follows:

23-01.3-01. Definitions. As used in this chapter:

1. "Confidential information" includes any confidential record as defined in subsection 3 of section 44-04-17.1, any protected health information, and any other information declared confidential by law.

2. "Disclose" means to disclose, transfer, permit access to, or otherwise divulge protected health information to any person other than the individual who is the subject of that information and includes the initial disclosure and any subsequent redisclosures of individually identifiable health care information.

3. "Institutional review board" means any board, committee, or other group formally designated by an institution or public health authority or authorized under federal or state law to review, approve the initiation of, or conduct a periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

4. "Law enforcement inquiry" means any executive branch investigation or official proceeding inquiring into a violation of, or failure to comply with, any criminal or civil statute or any regulation, rule, or order issued pursuant to such a statute.

5. "Nonidentifiable health information" means any information that would otherwise be protected health information except that it does not reveal the identity of the individual whose health or health care is the subject of the information and there is no reasonable basis to believe that the information could be used to identify that individual.

6. "Person" means a government, governmental subdivision of an executive branch agency or authority, corporation, company, association, firm, partnership, society, estate, trust, joint venture, individual, individual representative, tribal government, and any other legal entity.

7. "Protected health information" means any information, including genetic information, demographic information, and fluid or tissue samples

collected from an individual, diagnostic and test results, whether oral or recorded in any form or medium, which:

a. Is created or received by a health care provider, health researcher, health plan, health oversight authority, public health authority, employer, health or life insurer, school or university; and

b. (1) Relates to the past, present, or future physical or mental health or condition of an individual, including individual cells and their components; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

(2) (a) Identifies an individual; or

(b) With respect to which there is a reasonable basis to believe that the information can be used to identify an individual.

8. "Public health authority" means the state department of health, a local public health unit, and any authority or instrumentality of the United States, a tribal government, a state, or a political subdivision of a state, a foreign nation, or a political subdivision of a foreign nation, which is:

a. Primarily responsible for public health matters; and

b. Primarily engaged in activities such as injury reporting, public health surveillance, and public health investigation or intervention.

9. "School or university" means an institution or place for instruction or education, including an elementary school, secondary school, or institution of higher learning, a college, or an assemblage of colleges united under one corporate organization or government.

10. "State" includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

11. "Writing" or "written" means writing in either a paper-based or computer-based form, including electronic signatures.

23-01.3-02. Disclosure of protected health information - In general. Protected health information in possession of a public health authority may be disclosed only as authorized by this chapter or another law of this state explicitly authorizing the disclosure of that information, except that protected health information received or maintained under chapter 23-01.1 may be disclosed only as authorized by that chapter. Subject to section 23-01-15, subsection 1 of section 23-07-02.2, and any other requirements of this title, this chapter does not prohibit a public health authority from disclosing protected health information for use in a biomedical research project approved by an institutional review board or public health information that has been transformed to protect the identity of the patient through coding or encryption if the information is disclosed for use in an epidemiological or statistical study.

23-01.3-03. Disclosure of a patient's own record. Notwithstanding any other law, any confidential or protected health information may be disclosed by a public health authority to the person to whom the record pertains, that person's physician, or their legal or designated agent or guardian, if no other person is identified in the record. The public health authority may require a signed consent from the person prior to disclosing any information. This section does not apply to an agent or guardian if disclosing information to the agent or guardian is prohibited by law.

23-01.3-04. Nonpublic disclosure to a public health authority.

1. A health care provider, public health authority, law enforcement official, school or university, or the agent of any such individual or entity, may disclose protected health information concerning an individual to a public health authority if:

   a. There is a specific nexus between the individual's identity and a threat of a specific disease, death, or injury to any individual or to the public health; and

   b. The individual's identity would allow that public health authority to prevent or significantly reduce the possibility of disease, injury, or death to any individual or the public health.

2. An entity described in subsection 1 is not liable for the disclosure of protected health information:

   a. To a public health authority based upon a good-faith belief and credible representation made by that authority that this information is required to protect an individual or the public health from a threat of a specific disease, injury, or death; or

   b. If that disclosure is made pursuant to a federal or state law that is designed to protect the public health or safety.

3. Except for the failure to report information required by chapters 23-07, 23-07.1, 23-07.3, or 23-07.4, or any other law requiring disclosure of information regarding a disease or condition, an entity described in subsection 1 is not liable for the failure to disclose protected health information to a public health authority.

4. Any disclosure of protected health information under this section must be limited to the minimum amount of information necessary to achieve the purposes of this section.

5. A recipient of information pursuant to this section may use or disclose that information solely to achieve the purposes of this section.

6. Nothing in this section permitting the disclosure of protected health information may be construed to require that disclosure, unless disclosure is otherwise required by law.

7. Protected health information disclosed under this section must be clearly identified as protected health information that is subject to this chapter.

23-01.3-05. Nonpublic disclosure in emergency circumstances.

1. In the event of a threat of imminent physical or mental harm to the subject of protected health information, a public health authority, in order to allay or remedy that threat, may disclose protected health information about that subject to a health care practitioner, health care facility, law enforcement authority, or emergency medical personnel to protect the health or safety of that subject.

2. In the event of a threat of harm to an individual other than the subject of protected health information, a public health authority may disclose protected health information about that subject if:

   a. There is an identifiable threat of serious disease, injury, or death to an identifiable individual or group of individuals;

   b. The subject of the protected health information has the ability to carry out that threat; and

   c. The disclosure of that information is necessary to prevent or significantly reduce the possibility of that threat.

3. Any disclosure of protected health information under this section must be limited to the minimum amount of information necessary to achieve the purposes of this section.

4. A recipient of information pursuant to this section may use or disclose that information solely to carry out the purposes of this section.

5. Protected health information disclosed under this section must be clearly identified as protected health information that is subject to this section.

23-01.3-06. Disclosure for law enforcement purposes.

1. Notwithstanding any other law, a public health authority, or the agent of any such entity, may disclose protected health information to a law enforcement authority if the state health officer determines that:

   a. The protected health information is necessary to a legitimate law enforcement inquiry that has begun or may be initiated into a particular violation of a criminal law or public health law being conducted by the authority; and

   b. The investigative or evidentiary needs of the law enforcement authority cannot be satisfied by nonidentifiable health information or by any other information.

2. If a public health authority discloses protected health information under this section, that authority shall impose appropriate written safeguards to ensure the confidentiality of the information and to protect against unauthorized or improper use or disclosure.

3. Protected health information about an individual that is disclosed under this section may not be used in, or disclosed to any person for use in, any administrative, civil, or criminal action or investigation directed against the individual, unless the action or investigation arises out of, or is directly related to, the law enforcement inquiry for which the information was obtained.

4. When the matter or need for which protected health information was disclosed to a law enforcement authority or grand jury has concluded, including any derivative matters arising from that matter or need, the law enforcement authority or grand jury must either destroy the protected health information, or return it to the person from whom it was obtained.

5. To the extent practicable, and consistent with the requirements of due process, a law enforcement authority shall redact personally identifying information from protected health information prior to the public disclosure of that protected information in a judicial or administrative proceeding.

6. Any disclosure of protected health information under this section must be limited to the minimum amount of information necessary to fulfill the purposes of this section.

7. A recipient of information pursuant to this section may use or disclose that information solely to fulfill the purposes of this section.

8. Protected health information disclosed under this section must be clearly identified as protected health information that is subject to this chapter.

9. This section may not be construed to limit or restrict the ability of law enforcement authorities to gain information while in hot pursuit of a suspect or if other exigent circumstances exist.

23-01.3-07. Disclosure of a public health incident.

1. Notwithstanding any other law, the state health officer may disclose confidential information or protected health information to a health care provider or the public if the state health officer determines that:

   a. Disclosure of information is required to prevent the spread of disease;

   b. Disclosure of information is required to identify the cause or source of disease; or

   c. Disclosure of information is required to allay fear and aid the public in understanding the risk of its exposure to disease.

2. The state health officer may disclose protected health information only to the extent necessary to accomplish the purposes of this section, and may require any health care provider receiving confidential or protected health information under this section to keep that information confidential under written terms.

23-01.3-08. Status of information in possession of a local public health authority. Any protected health information that is created or received by a local public health authority, and that is submitted or is required to be submitted to the state department of health, is confidential and subject to the protection of, and may be disclosed only as authorized by, this chapter.

23-01.3-09. Penalty for unauthorized disclosure. A person who knowingly discloses protected health information in violation of this chapter is guilty of a class A misdemeanor.

SECTION 2. A new section to chapter 23-17.3 of the North Dakota Century Code is created and enacted as follows:

Information confidential. Information received under this chapter by the state department of health, through inspection or otherwise, is confidential and may not be disclosed except:

1. In a proceeding involving the question of license;

2. In a judicial proceeding, upon a court order; or

3. To a health or social services agency with specific responsibility for a patient's care.

Approved April 1, 1999
Filed April 2, 1999

CHAPTER 233

SENATE BILL NO. 2253

(Senators Watne, Lyson)

HIV TEST REPORTS

AN ACT to create and enact a new subdivision to subsection 1 of section 23-07.5-05 of the North Dakota Century Code, relating to confidentiality of human immunodeficiency virus infection test results; and to amend and reenact section 23-07-02.1 and subsection 2 of section 23-07-07.5 of the North Dakota Century Code, relating to reports of human immunodeficiency virus infection.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-07-02.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-07-02.1. Reports of human immunodeficiency virus infection - Penalty. Every attending physician treating an individual known by the physician to have a diagnosis of human immunodeficiency virus infection, acquired immune deficiency syndrome, or human immunodeficiency virus related illness, including death from human immunodeficiency virus infection, shall make a report on that individual to the state department of health. ~~All persons, other than an attending physician,~~ A person treating an individual known to have human immunodeficiency virus infection in a hospital, a clinic, a sanitarium, ~~penal institution~~ the physical custody of the department of corrections and rehabilitation, a regional or local correctional facility or juvenile detention center, the North Dakota youth correctional center, or other private or public institution shall make a report on that individual to ~~an official designated by the respective facility to receive reports of significant infectious diseases within~~ the facility administrator or the facility administrator's designee. Further release of information on any individual known to have human immunodeficiency virus infection may only be provided to medical personnel providing direct care to the individual. The designated official shall, if satisfied that the report is valid, make a report to the department on each individual having a diagnosis of human immunodeficiency virus infection, acquired immune deficiency syndrome, or human immunodeficiency virus related illness, including death from human immunodeficiency virus infection, unless the diagnosed individual's attending physician has made such a report. The reports required under this section must contain the name, date of birth, sex, and address of the individual reported on and the name and address of the physician or designated official making the report. Failure by a facility to designate an official to whom reports must be made is an infraction. Any person who in good faith complies with this section is immune from civil and criminal liability for any action taken in compliance with this section.

SECTION 2. A new subdivision to subsection 1 of section 23-07.5-05 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

If the test subject is in the physical custody of the department of corrections and rehabilitation, to the director of the facility having physical custody of the test subject. If the test subject is a resident of the North Dakota youth correctional center, to the

superintendent. If the test subject is in a correctional facility as defined in chapter 12-44.1, to the correctional facility administrator.

SECTION 3. AMENDMENT. Subsection 2 of section 23-07-07.5 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The results of any positive or reactive test must be reported to the state department of health in the manner prescribed by the department and to the individual tested. Subsection 1 does not require the testing of an individual before sentencing or the testing of an individual held in a jail or correctional facility awaiting transfer to the state penitentiary.

Approved March 29, 1999
Filed March 29, 1999

CHAPTER 234

SENATE BILL NO. 2143

(Education Committee)
(At the request of the Superintendent of Public Instruction)

HOME-BASED INSTRUCTION INOCULATION FILING

AN ACT to amend and reenact subsection 1 of section 23-07-17.1 of the North Dakota Century Code, relating to the place of filing certification of inoculation for a child receiving home-based instruction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[176] **SECTION 1. AMENDMENT.** Subsection 1 of section 23-07-17.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. ~~No~~ A child may not be admitted to any public, private, or parochial school, or day care center, child care facility, headstart program, or nursery school operating in ~~North Dakota~~ this state or be supervised through home-based instruction unless ~~such~~ the child's parent or guardian presents to the institution authorities a certification from a licensed physician or authorized representative of the state department of health that ~~such~~ the child has received immunization against diphtheria, pertussis, tetanus, measles, rubella (German measles), mumps, and poliomyelitis. In the case of a child receiving home-based instruction, the child's parent or legal guardian shall file the certification with the ~~superintendent of public instruction~~ public school district in which the child resides.

Approved March 11, 1999
Filed March 11, 1999

[176] Section 23-07-17.1 was also amended by section 1 of Senate Bill No. 2126, chapter 235.

CHAPTER 235

SENATE BILL NO. 2126

(Senators Thane, DeMers, Kilzer)
(Representatives Price, Rose)
(At the request of the State Department of Health)

INOCULATION REQUIREMENTS

AN ACT to amend and reenact subsections 1 and 3 of section 23-07-17.1 of the North Dakota Century Code, relating to diseases for which inoculations are required before a child's admission to school.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[177] **SECTION 1. AMENDMENT.** Subsections 1 and 3 of section 23-07-17.1 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. ~~No~~ A child may not be admitted to any public, private, or parochial school, or day care center, child care facility, headstart program, or nursery school operating in ~~North Dakota~~ this state or be supervised through home-based instruction unless ~~such~~ the child's parent or guardian presents to the institution authorities a certification from a licensed physician or authorized representative of the state department of health that ~~such~~ the child has received immunization against diphtheria, pertussis, tetanus, measles, rubella (German measles), mumps, ~~and~~ hepatitis B, haemophilus influenza type b (Hib), and poliomyelitis. In the case of a child receiving home-based instruction, the child's parent or legal guardian shall file the certification with the ~~superintendent of public instruction~~ public school district in which the child resides.

3. Any minor child, through the child's parent or guardian, may submit to the institution authorities either a certificate from a licensed physician stating that the physical condition of the child is such that immunization would endanger the life or health of the child or a certificate signed by the child's parent or guardian whose religious, philosophical, or moral beliefs are opposed to such immunization. The minor child is then exempt from the provisions of this section.

Approved March 29, 1999
Filed March 29, 1999

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[177] Section 23-07-17.1 was also amended by section 1 of Senate Bill No. 2143, chapter 234.

CHAPTER 236

SENATE BILL NO. 2196

(Senators Krauter, Sand, Thane)
(Representatives Carlisle, Delzer, Meyer)

BASIC AND LONG-TERM CARE BED MORATORIUM

AN ACT to amend and reenact sections 23-09.3-01.1 and 23-16-01.1 of the North Dakota Century Code, relating to a moratorium on additional basic care facility and long-term care beds and a prohibition on the creation of a bed bank.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-09.3-01.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-09.3-01.1. Moratorium on expansion of basic care bed capacity. 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~~ may not issue a license under this chapter for any additional bed capacity 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~~ 1999, during the period between August 1, ~~1997~~ 1999, and July 31, ~~1999~~ 2001. 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~~ 1999, to July 31, ~~1999~~ 2001, 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. Existing licensed beds released by a facility which are not immediately transferred to another facility may not be banked for future transfer to another facility.

SECTION 2. AMENDMENT. Section 23-16-01.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-16-01.1. Moratorium on expansion of long-term care bed capacity. Notwithstanding sections 23-16-06 and 23-16-10, 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 may not issue a license for any additional bed capacity above the state's gross licensed capacity of seven thousand one hundred forty beds, adjusted by any reduction in beds before July 31, ~~1997~~ 1999, during the period between August 1, ~~1997~~ 1999, and July 31, ~~1999~~ 2001. 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~~ 1999, to July 31, ~~1999~~ 2001, 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.~~ Existing licensed beds released by a facility which are not immediately transferred to another facility may not be banked for future transfer to another facility.

Approved March 17, 1999
Filed March 17, 1999

CHAPTER 237

HOUSE BILL NO. 1143
(Representative DeKrey)

MEDICAL RECORD COPIES

AN ACT to provide for patient copies of medical records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Copies of medical records.

1. As used in this section, "medical provider" means a licensed individual or licensed facility providing health care services. This section applies to every medical provider unless expressly provided otherwise by law. Upon the written request of a medical provider's patient or any person authorized by a patient, the medical provider shall:

   a. Provide a free copy of a patient's medical records to a medical provider designated by the patient or the person authorized by the patient if the records are requested for the purpose of transferring that patient's medical care to another medical provider for the continuation of medical treatment.

   b. Provide a copy of a patient's medical records requested for any purpose other than the continuation of care for a maximum charge of twenty dollars for the first twenty-five pages and seventy-five cents per page for every page beyond twenty-five. This charge includes any administrative fee, retrieval fee, and postage expense.

2. A written medical records release must be for a specific stated time, but not to exceed three years or until revoked in writing by the patient.

Approved March 23, 1999
Filed March 23, 1999

CHAPTER 238

SENATE BILL NO. 2437

(Senators Tallackson, Grindberg, Klein, T. Mathern)
(Representatives Herbel, Maragos)
(Approved by the Delayed Bills Committee)

SALE OF FIREWORKS

AN ACT to create and enact a new section to chapter 23-15 of the North Dakota Century Code, relating to fireworks sales for New Year's Eve 2000; and to amend and reenact section 23-15-01 of the North Dakota Century Code, relating to the sale of fireworks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[178] **SECTION 1. AMENDMENT.** Section 23-15-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-15-01. Fireworks defined - Sale of fireworks. The term fireworks means ~~and~~ i~~ncludes~~ any combustible or explosive composition, or any substance or combination of substances or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration, or detonation~~, and~~. The term includes any blank c~~artridges~~ cartridge, toy ~~pistols~~ pistol, toy ~~cannons~~ cannon, toy ~~canes~~ cane, or toy ~~guns~~ gun in which ~~explosives~~ an explosive other than a toy paper ~~caps are~~ cap is used~~, the type of balloons which require~~; balloon that requires fire underneath to propel the ~~same, firecrackers~~ balloon; firecracker, t~~orpedoes~~ torpedo, ~~skyrockets~~ skyrocket, Roman ~~candles~~ candle, daygo ~~bombs~~ bomb, ~~sparklers~~ sparkler, or other ~~fireworks~~ item of like construction~~, any fireworks~~; item containing any explosive or flammable compound~~,~~; or any t~~ablets~~ tablet or other device containing any explosive substance. ~~Nothing in this regulation may be construed as applying~~ This section does not apply to any toy paper ~~caps~~ cap containing not more than twenty-five hundredths of a grain [16.20 milligrams] of explosive composition per cap.

Any person~~, firm, corporation, or limited liability company having operated~~ operating a retail business ~~wherein~~ in which merchandise was assessed by the local taxing authority~~,~~ on April first i~~mmediately preceding thereto, and having~~ of that year and which has a retail license as provided in section 23-15-04 may offer for sale and sell at retail that year, to ~~persons of~~ any individual who is at least twelve years of age ~~or more~~, only during the period ~~beginning~~ June twenty-seventh ~~and ending~~ through July fifth, ~~both~~ ~~dates~~ i~~nclusive,~~ the following items:

1. ~~Star~~ l~~ights~~ A star light, with wood spike cemented in one end, total pyrotechnic composition not to exceed twenty grams each in weight (10 ball).

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[178] Section 23-15-01 was also amended by section 1 of Senate Bill No. 2100, chapter 498.

2. ~~Helicopter~~ A helicopter type f~~lyers~~ flyer, total pyrotechnic composition not to exceed twenty grams each in weight.

3. ~~Cylindrical~~ ~~fountains~~ A cylindrical fountain, total pyrotechnic composition not to exceed seventy-five grams each in weight. The inside tube diameter may not exceed three-fourths inch [19.05 millimeters].

4. ~~Cone~~ ~~fountains~~ A cone fountain, total pyrotechnic composition not to exceed fifty grams each in weight.

5. ~~Wheels~~ A wheel, total pyrotechnic composition not to exceed sixty grams in weight, for each driver unit, but there may be any number of drivers on any one wheel. The inside bore of a driver t~~ubes~~ tube may not be over one-half inch [12.7 millimeters].

6. ~~Illuminating~~ t~~orches~~ ~~and~~ An illuminating torch or a colored fire in any form, total pyrotechnic composition not to exceed one hundred grams each in weight.

7. ~~Sparklers~~ ~~and~~ A sparkler or a dipped ~~sticks~~ stick, total pyrotechnic composition not to exceed one hundred grams each in weight. Pyrotechnic composition containing any chlorate may not exceed five grams.

8. ~~Comets~~ ~~and~~ ~~shells~~ A comet or shell, of which the mortar is an integral part, except t~~hose~~ a comet or shell designed to produce an audible effect, total pyrotechnic composition not to exceed forty grams each in weight.

9. ~~Soft~~ A soft shell f~~irecrackers~~ firecracker not to exceed one and one-half inches [38.1 millimeters] in length and one-fourth inch [6.35 millimeters] in diameter, total pyrotechnic composition not to exceed fifty milligrams each in weight.

10. ~~Whistles~~ A whistle without report, total pyrotechnic composition not to exceed forty grams each in weight.

SECTION 2. A new section to chapter 23-15 of the North Dakota Century Code is created and enacted as follows:

Sale of fireworks - New Year's Eve 2000. Notwithstanding the date limitations relating to the sale of fireworks under section 23-15-01, a person otherwise able to sell fireworks under section 23-15-01 may sell fireworks during the period December 26, 1999, through January 1, 2000.

Approved April 1, 1999
Filed April 2, 1999

CHAPTER 239

SENATE BILL NO. 2366

(Senators Naaden, Christmann, Mutch)
(Representative Brusegaard)

SOLID WASTE DEFINITION

AN ACT to amend and reenact subsection 14 of section 23-29-03 of the North Dakota Century Code, relating to the definition of solid waste.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 14 of section 23-29-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14. "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities. The term does not include ~~solid~~:

    a. Agricultural waste, including manures and crop residues, returned to the soil as fertilizer or soil conditioners; or

    b. Solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges that are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended [Pub. L. 92-500, 86 Stat. 816, 33 U.S.C. 1251 et seq.], or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended [68 Stat. 919, 42 U.S.C. 2011 et seq.].

Approved March 19, 1999
Filed March 22, 1999

CHAPTER 240

SENATE BILL NO. 2178

(Natural Resources Committee)
(At the request of the Department of Health)

AIR AND WATER POLLUTION PENALTIES

AN ACT to amend and reenact sections 23-25-10 and 61-28-08 of the North Dakota Century Code, relating to air and water pollution penalties; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-25-10 of the North Dakota Century Code is amended and reenacted as follows:

23-25-10. Enforcement - Penalties - Injunctions.

1. ~~If, after the completion of the administrative hearing process, the department determines that a violation of this chapter, or any rule, regulation, or order of the department issued under this chapter, has occurred, it shall make all of its evidence and findings available to the attorney general for use in any remedial action his office determines to be appropriate, including an action for injunctive relief.~~

~~2.~~ Any person who willfully violates this chapter, or any permit condition ~~or~~, rule, order, limitation, or other applicable requirement implementing this chapter ~~must be punished by~~, is subject to a fine of not more than ~~twenty-five~~ ten thousand dollars per day ~~of~~ per violation, or by imprisonment ~~in the county jail~~ for not more than one year, or ~~by~~ both ~~such fine and imprisonment~~. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment must be by a fine of not more than ~~fifty~~ twenty thousand dollars per day ~~of~~ per violation, or by imprisonment ~~in the county jail~~ for not more than two years, or ~~by~~ both ~~such fine and imprisonment~~.

2. Any person who violates this chapter, or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, with criminal negligence as defined by section 12.1-02-02, is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment for not more than six months, or both.

3. Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter~~, must~~ or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, upon conviction, ~~be punished by~~ is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment ~~in~~

~~the county jail~~ for not more than six months, or ~~by~~ both ~~such fine and imprisonment~~.

4. Any person who violates this chapter, or any permit condition ~~or~~, rule, order, limitation, or other applicable requirement implementing this chapter, ~~and any person who violates any order issued by the department,~~ is subject to a civil penalty not to exceed ten thousand dollars per day ~~of such~~ per violation.

~~Nothing in this chapter may be construed to deny use of the remedy of injunctive relief where it is deemed appropriate.~~

5. Without prior revocation of any pertinent permits, the department, in accordance with the laws of this state governing injunction or other process, may maintain an action in the name of the state against any person to enjoin any threatened or continuing violation of any provision of this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter.

SECTION 2. AMENDMENT. Section 61-28-08 of the North Dakota Century Code is amended and reenacted as follows:

61-28-08. Penalties - Injunctions.

1. Any person who willfully violates this chapter, or any permit condition ~~or~~, rule, order, limitation, or other applicable requirement implementing this chapter ~~shall be punished by~~, is subject to a fine of not more than ~~twenty-five~~ ten thousand dollars per day ~~of~~ per violation, or by imprisonment ~~in the county jail~~ for not more than one year, or both. If the conviction is for a violation committed after a first conviction of such person under this ~~paragraph~~ subsection, punishment shall be by a fine of not more than ~~fifty~~ twenty thousand dollars per day ~~of~~ per violation, or by imprisonment ~~in the county jail~~ for not more than two years, or ~~by~~ both.

2. Any person who violates this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, with criminal negligence as defined by section 12.1-02-02, is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment for not more than six months, or both.

3. Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, ~~shall~~ upon conviction, ~~be punished by~~ is subject to a fine of not more than ~~ten~~ five thousand dollars per day per violation or by imprisonment ~~in the county jail~~ for not more than six months, or ~~by~~ both.

~~3.~~ 4. Any person who violates this chapter, or any permit condition ~~or~~, rule, order, limitation, or other applicable requirement implementing ~~the~~ this chapter, ~~and any person who violates any order issued by the~~

~~department shall be~~ is subject to a civil penalty not to exceed ~~ten~~ five thousand dollars per day ~~of such~~ per violation.

~~4.~~ 5. ~~The~~ Without prior revocation of any pertinent permits, the department may, in accordance with the laws of this state governing injunctions or other process, maintain an action in the name of the state against any person ~~violating~~ to enjoin any threatened or continuing violation of any provision of this chapter or any permit condition, rule, ~~regulation, or~~ order i~~ssued~~ t~~hereunder~~, limitation, or other applicable requirement implementing this chapter.

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 241

SENATE BILL NO. 2365

(Senators Wanzek, Mutch, Naaden)
(Representative Brusegaard)

ODOR REGULATION

AN ACT to create and enact a new section to chapter 23-25 of the North Dakota Century Code, relating to state department of health odor readings.

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:

Regulation of odors - Rules.

1. In areas located within a city or the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that measures seven odor concentration units or higher outside the property boundary where the discharge is occurring.

2. In areas located outside a city or outside the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that causes odors that measure seven odor concentration units or higher as measured at any of the following locations:

   a. Within one hundred feet [.80 meters] of any residence, church, school, business, or public building, or within a campground or public park. An odor measurement may not be taken at the residence of the owner or operator of the source of the odor, or at any residence, church, school, business, or public building, or within a campground or public park, that is built or established within one-half mile [.80 kilometer] of the source of the odor after the source of the odor has been built or established; or

   b. At any point located beyond one-half mile [.80 kilometer] from the source of the odor, except for property owned by the owner or operator of the source of the odor, or over which the owner or operator of the source of the odor has purchased an odor easement.

3. An odor measurement may be taken only with a properly maintained scentometer, by an odor panel, or by another instrument or method approved by the state department of health, and only by inspectors certified by the department who have successfully completed a department-sponsored odor certification course and demonstrated the ability to distinguish various odor samples and concentrations.

4. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land in accordance

with a nutrient management plan approved by the state department of health. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land owned or leased by that person in accordance with rules adopted by the department. An owner or operator of a lagoon or waste storage pond permitted by the department is exempt from this section in the spring from the time when the cover of the permitted lagoon or pond begins to melt until fourteen days after all the ice cover on the lagoon or pond has completely melted. Notwithstanding these exemptions, all persons shall manage their property and systems to minimize the impact of odors on their neighbors.

5. This section does not apply to chemical compounds that can be individually measured by instruments, other than a scentometer, that have been designed and proven to measure the individual chemical or chemical compound, such as hydrogen sulfide, to a reasonable degree of scientific certainty, and for which the state department of health has established a specific limitation by rule.

6. For purposes of this section, a public park is a park established by the federal government, the state, or a political subdivision of the state in the manner prescribed by law. For purposes of this section, a campground is a public or private area of land used exclusively for camping and open to the public for a fee on a regular or seasonal basis.

Approved April 1, 1999
Filed April 2, 1999

CHAPTER 242

SENATE BILL NO. 2045

(Legislative Council)
(Insurance and Health Care Committee)

PUBLIC HEALTH LAW REVISION

AN ACT to create and enact chapter 23-35 of the North Dakota Century Code, relating to public health law; to amend and reenact subsection 2 of section 23-01-05, subsection 2 of section 23-07.6-01, subdivision h of subsection 1 of section 40-01.1-04, section 54-52-02, and subsection 13 of section 58-06-01 of the North Dakota Century Code, relating to references to public health law and the powers and duties of boards of township supervisors; to repeal chapters 23-03, 23-04, 23-05, section 23-07-04, and chapter 23-14 of the North Dakota Century Code, relating to public health law; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 23-01-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Hold ~~the several~~ public health unit boards of health responsible for ~~the~~ enforcement of state r~~egulations~~ rules, serve in an advisory capacity to ~~the several~~ public health unit boards of health ~~in the counties, cities, and townships of this state~~, and provide for coordination of health activities.

SECTION 2. AMENDMENT. Subsection 2 of section 23-07.6-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Local board" means a board of health as d~~escribed~~ defined under section ~~23-05-01 or a district board of health as described under section 23-14-04~~ 23-35-01.

SECTION 3. Chapter 23-35 of the North Dakota Century Code is created and enacted as follows:

23-35-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Board of health" means a district, county, or city board of health.

2. "Department" means the state department of health.

3. "Governing body" means, as applicable, a city commission, city council, board of county commissioners, or joint board of county commissioners.

4. "Health district" means an entity formed under section 23-35-04 or 23-35-05.

5. "Joint board of county commissioners" means the boards of county commissioners of two or more counties acting together in joint session.

6. "Local health officer" means the health officer of a public health unit.

7. "Public health department" means a city or county health department formed under this chapter.

8. "Public health unit" means the local organization formed under this chapter to provide public health services in a city, county, or designated multicounty or city-county area. The term includes a city public health department, county public health department, and a health district.

23-35-02. Public health units. All land in the state must be in a public health unit before January 1, 2001. The health council may issue rules defining the core functions a public health unit shall undertake.

23-35-03. Boards of health.

1. The department shall advise boards of health.

2. A city's or county's governing body may establish a public health unit by creating and appointing a board of health, which in the case of a city, may be composed of the city's governing body. A board of health must have at least five members.

   a. In the case of a board of health created by a joint board of county commissioners, each county in the health district must have at least one representative on the board; each county of over fifteen thousand population must have an additional representative for each fifteen thousand population or major fraction of that number; and in a health district of fewer than five counties, each county must have at least one representative on the district board of health, and the additional representatives selected to constitute the minimum five-member board must be equitably apportioned among the counties on a population basis.

   b. In the case of a joint city-county health district composed of only one county and having at least one city over fifteen thousand population, each city having a population over fifteen thousand must have a representative on the district board of health for each fifteen thousand population or major fraction of that number, and the remaining population of the county, exclusive of the populations of cities with more than fifteen thousand each, must have a representative on the district board of health for each fifteen thousand population or major fraction of that number, or at least one member if the remaining population is less than fifteen thousand.

3. The initial members of any board of health appointed by a governing body must be appointed for terms as follows: at least one for one year, one for two years, one for three years, one for four years, and one for five years. If a board has more than five members, the members must be appointed for staggered terms. All subsequent appointments are for five-year terms. Each board member shall serve until a successor is appointed and qualified. If a vacancy occurs, the appointing government authority shall appoint a member for the remainder of the unexpired term. Each appointee shall qualify by filing the oath of office. A board of health may not be all male or all female. If the members of

a governing body serve on a board of health or if an employee of a governing body serves on a board of health, this subsection does not apply to those governing body members and that employee.

4. A board of health shall meet at least quarterly. Special meetings may be held at any time at the call of the president.

5. Except if the governing body serves as the board of health, at the first meeting after appointment, and annually, the members of a board of health shall organize by electing a president, a vice president, and other officers the board considers necessary. If there is a treasurer and the treasurer is not a public employee, the treasurer must be bonded in an amount fixed by the board. If the health officer is not appointed to the board, the health officer does not have a vote in matters of the board. The office of secretary and treasurer may be combined.

6. Any board member who is not a public employee may be compensated at a rate not exceeding sixty-two dollars and fifty cents per day, but for no more than twenty-five days per year, and may be reimbursed for expenses incurred in the manner and in an amount not exceeding the amount provided for a state officer.

23-35-04. Health districts - Formation - Contracting for services.

1. Upon the adoption of a resolution, the governing body may form a multicounty or a city-county health district.

2. Notwithstanding this chapter, in a county without a countywide public health unit, the board of county commissioners, upon adoption of a resolution, may contract with a city that has a public health department to provide health services to the county and in the cities throughout the county which do not have a public health unit. The contract must comply with chapter 54-40.3. When a contract is executed, any provision of this chapter relating to organizing district boards of health does not apply, and the city public health department shall exercise all the necessary powers and duties of a public health unit under this chapter. The department shall treat a county with a contract under this subsection as a public health unit.

23-35-05. Health districts - Expansion - Merger.

1. Upon adoption of a resolution, a county that is not included in any public health unit may request inclusion as a part of an existing health district. Upon receipt of a request to become part of an existing health district, the district board of health shall consider the request and, if the board approves the request by a majority vote, shall submit the matter to each county in the health district. If a majority of the counties approve the request by a majority vote, the requesting county becomes a part of the health district.

2. Upon expansion of a health district under this section, the number of board of health members must be adjusted to allow the added county the same proportion of members allowed to member cities and counties of the existing health district as determined under this chapter.

3. Any two or more health districts may merge into a single health district upon a majority vote of the respective boards of health and a majority vote of the governing body of each county. The assets of each merging health district become the property of the newly created health district. Board of health membership of a new health district must be determined under section 23-35-03, unless otherwise decided by the board. The new health district maintains the same authority and powers of the previous health districts. The mill levy of the newly created health district is not limited by the old mill levy but may not exceed the amount allowed under section 23-35-07.

4. Upon adoption of a health district plan by two or more counties, the joint board of county commissioners shall appoint a district board of health.

23-35-06. Health districts - Dissolution - Withdrawal.

1. If a health district has been in operation for two years, the district may be dissolved as provided for under this section. If a petition is filed with the county auditor of each county of a health district which is signed by qualified electors of that county equal to ten percent or more of the votes cast in that county at the last general election, an election on the question of dissolution must be presented to the qualified electors in each county in the district at the next 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 district is dissolved on the second 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 on this issue may be held for two years.

2. If a health district has been in operation for two years, any county may withdraw from the district as provided under this section. If a petition is filed with the withdrawing county's auditor which is signed by qualified electors of the county equal to ten percent or more of the votes cast in that county at the last general election, an election on the question of withdrawal must be presented to the qualified electors in the county at the next election in the county. If a majority of the votes cast on the question favor withdrawing from the district, the county is withdrawn from the district on the second January first following the election. If a majority of the votes cast on the question are against withdrawal, no other election on this issue may be held for two years.

23-35-07. Health district funds.

1. A district board of health shall prepare a budget for the next fiscal year at the time at which and in the manner in which a county budget is adopted and shall submit this budget to the joint board of county commissioners for approval. The amount budgeted and approved must be prorated in health districts composed of more than one county among the various counties in the health district according to the assessed valuation of the respective counties in the health district. For the purpose of this section, "prorated" means that each member county's contribution must be based on an equalized mill levy throughout the district. Within ten days after approval by the joint board of county commissioners, the district board of health shall certify the budget to the respective county auditors and the budget must be included in the levies

of the counties. The budget may not exceed the amount that can be raised by a levy of five mills on the taxable valuation, subject to public hearing in each county in the health district at least fifteen days before an action taken by the joint board of county commissioners. Action taken by the joint board of county commissioners must be based on the record, including comments received at the public hearing. A levy under this section is not subject to the limitation on the county tax levy for general and special county purposes. The amount derived by a levy under this section must be placed in the health district fund. The health district fund must be deposited with and disbursed by the treasurer of the district board of health. Each county in a health district quarterly shall remit and make settlements with the treasurer. Any funds remaining in the fund at the end of any fiscal year may be carried over to the next fiscal year.

2. The district board of health, or the president and secretary of the board when authorized or delegated by the board, shall audit all claims against the health district fund. The treasurer shall pay all claims from the health district fund. The district board of health shall approve or ratify all claims at the board's quarterly meetings.

23-35-08. Boards of health - Powers and duties. Except when in conflict with a local ordinance or a civil service rule within a board of health's jurisdiction, each board of health:

1. Shall keep records and make reports required by the department.

2. Shall prepare and submit a public health unit budget.

3. Shall audit, allow, and certify for payment expenses incurred by a board of health in carrying into effect this chapter.

4. May accept and receive any contribution offered to aid in the work of the board of health or public health unit.

5. May make rules regarding any nuisance, source of filth, and any cause of sickness which are necessary for public health and safety.

6. May establish by rule a schedule of reasonable fees that may be charged for services rendered. Services may not be withheld due to an inability to pay any fees established under this subsection.

7. May make rules in a health district or county public health department, as the case may be, and in the case of a city public health department may recommend to the city's governing body ordinances for the protection of public health and safety.

8. May adopt quarantine and sanitary measures in compliance with chapter 23-07.6 which are necessary when an infectious or contagious disease exists.

9. May make and enforce an order in a local matter if an emergency exists.

10. May inquire into any nuisance, source of filth, or cause of sickness.

11. Except in the case of an emergency, may conduct a search or seize material located on private property to ascertain the condition of the property as the condition relates to public health and safety as authorized by an administrative search warrant issued under chapter 29-29.1.

12. May abate or remove any nuisance, source of filth, or cause of sickness when necessary to protect the public health and safety.

13. May supervise any matter relating to preservation of life and health of individuals, including the supervision of any water supply and sewage system.

14. May isolate, kill, or remove any animal affected with a contagious or infectious disease if the animal poses a material risk to human health and safety.

15. Shall appoint a local health officer.

16. May employ any person necessary to effectuate board rules and this chapter.

17. If a public health unit is served by a part-time local health officer, the board of health may appoint an executive director. An executive director is subject to removal for cause by the board of health. The board of health may assign to the executive director the duties of the local health officer, and the executive director shall perform these duties under the direction of the local health officer.

18. May contract with any person to provide the services necessary to carry out the purposes of the board of health.

19. Shall designate the location of a local health officer's office and shall furnish the office with necessary equipment.

20. May provide for personnel the board of health considers necessary.

21. Shall set the salary of the local health officer, the executive director, and any assistant local health officer and shall set the compensation of any other public health unit personnel.

22. Shall pay for necessary travel of the local health officer, the local health officer's assistants, and other personnel in the manner and to the extent determined by the board.

23-35-09. Abatement and removal of nuisance, source of filth, and cause of sickness.

1. If necessary for the protection of public health to abate or remove any nuisance, source of filth, or cause of sickness, the board of health shall serve notice on the owner or occupant of the property requiring the owner or occupant, at the owner's or occupant's expense, to remove or abate the nuisance, source of filth, or cause of sickness within a time specified by the board, not exceeding thirty days. If the owner or occupant fails to comply with the notice to remove or abate or if the nuisance, source of filth, or cause of sickness exists on property of

nonresident owners or on property the owners of which cannot be found, the board of health may remove or destroy the nuisance, source of filth, or cause of sickness at the expense of the appropriate city or county, which shall charge the expense against the lot, piece, or parcel of land on which the work is done.

2. The governing body of the city or county may levy and assess against the property the cost of the removal or destruction of a nuisance, source of filth, or cause of sickness, and the member of the governing body who is responsible for streets shall return and file the assessment in the office of the auditor of the city or county. The auditor shall publish, in the same manner as provided under section 40-22-06, the amount of the assessment together with a notice of the time and location the governing body will meet to consider the approval of the assessment. Each assessment must be recorded, collected, and paid as other taxes are recorded, collected, and paid.

3. If a board of health determines it necessary for the preservation of public health to enter any building within the board's jurisdiction to examine, destroy, remove, or prevent any nuisance, source of filth, or cause of sickness and is refused entrance into the building, the local health officer, or a designated agent of the local health officer, may make a complaint under oath to a district judge within the jurisdiction of the board of health stating the facts in the case which the local health officer, or a designated agent of the local health officer, has knowledge. If a warrant is issued and if requested by a board of health, a county sheriff or city police department shall provide assistance to that public health unit in any action to search or seize material in or on any private property to destroy, remove, or prevent the nuisance, source of filth, or cause of sickness, if there is probable cause to believe a public health hazard or public health nuisance exists on or in that property, and shall carry out any other preventive measures the public health unit requests. For purposes of this subsection, a request from a public health unit means a request for assistance which is specific to a public health nuisance and is not a continuous request for assistance.

23-35-10. District boards of health - Acquiring and disposing of property.

1. A district board of health may acquire by lease, purchase, construction, or gift for district health office use and control property for all purposes authorized by law or necessary to the exercise of the powers granted in this chapter. The district board of health may finance the purchase, construction, or equipping of a building on owned or leased property for the use and purpose for which the health district is formed and carry out the functions of the health district in either of the following ways:

   a. The district board of health may issue and sell bonds in an aggregate amount not exceeding two times the authorized tax revenues of the district for the year in which the bonds are to be issued and sold; or

   b. The district board of health may mortgage or otherwise encumber the building constructed in an amount not exceeding two times the authorized tax revenue of the district for the year in which the construction is to be commenced.

2. Bonds issued under this section and income under this section are exempt from any taxes except inheritance, estate, and transfer taxes. The indebtedness for which the bonds are issued, or for which a mortgage may be given as under this section, is neither an obligation or an indebtedness of this state nor of the counties or cities comprising the district board of health. Any indebtedness under this section may be foreclosed in any manner provided by law. The district board of health may convey or transfer property acquired as provided under this section. If, upon dissolution of a health district, any balance remains in the health district fund after all obligations have been paid, the balance must be transferred to the general fund of the counties comprising the health district in proportion to the assessed valuation most recently used in preparing the health district budget under this chapter. If any county in the district withdraws from a health district, any assets and inventory of supplies and equipment located in the county for use in health district programs and services remain the property of the district for use elsewhere in the district.

23-35-11. Budget. A city, county, or health district, as the case may be, shall prepare a county public health unit budget for the next fiscal year at the time and in the manner a county budget is adopted and submit the budget to the board of county commissioners for approval, shall prepare a city public health unit budget for the next fiscal year and submit the budget to the governing body of the city for approval, or shall prepare a district budget as provided under this chapter. In the case of a city board of health, the board shall certify the expenses to the governing body for payment out of the general fund of the city. The governing body or auditor shall audit any expenses incurred in quarantining or disinfecting any property outside an incorporated city and shall pay for any expenses out of the general fund of the county.

23-35-12. Local health officers.

1. A local health officer shall serve a term of five years, subject to removal for cause by the governing body or the district board of health. The health officer must be a physician licensed to practice medicine in this state and need not be a resident of the public health unit. The appointee shall qualify by filing the constitutional oath of office in the manner provided for the members of the board of health. If the state health officer finds a local health officer is failing to perform the duties of the position, the state health officer may report the case to the governing body of the appropriate city, county, or district board of health. At the next meeting of the city's or county's governing body or district board of health, the governing body or district board of health shall declare the office vacant and may appoint another physician to fill the unexpired term, or shall report the matter to the board of health, and the board shall declare the office vacant and promptly shall appoint another physician to fill the unexpired term.

2. Within the jurisdiction of the board of health, a local health officer:

   a. Shall keep a record of the official acts of the local health officer.

   b. Shall enforce every law and rule relating to preservation of life and health of individuals.

c. May exercise the powers and duties of the board of health under the supervision of the board of health.

d. May make sanitary inspections of any place within the jurisdiction in which the local health officer finds a probability a health-threatening condition exists.

e. May investigate public water and ice supplies suspected of contamination and initiate necessary condemnation proceedings.

f. May enforce school cleanliness; inspect any school that may be overcrowded, poorly ventilated, or unsanitary; and, when necessary, report cases of any unsanitary or unsafe school building to the board of health for investigation.

g. May take any action necessary for the protection of public health and safety.

h. May determine when quarantine and disinfection is necessary for the safety of the public. The local health officer may establish quarantines consistent with procedures provided under chapter 23-07.6 and perform any acts required for disinfection when necessary.

i. Shall maintain an office within the jurisdiction of the public health unit consistent with any terms of appointment.

j. May select and discharge any assistant health officer in the public health unit, consistent with any terms of appointment.

3. A local health officer may request the assistance of a county sheriff or city health department in the same manner as provided under subsection 3 of section 23-35-09.

23-35-13. Penalty. A person who violates any order, ordinance, or rule prescribed by any board of health or health officer or any rule adopted under this chapter is guilty of a class B misdemeanor.

[179] **SECTION 4. AMENDMENT.** Subdivision h of subsection 1 of section 40-01.1-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

h. Use of other statutory tools relating to social and economic development, land use, transportation and roads, health, law enforcement, administrative and fiscal services, recording and registration services, educational services, environmental quality, water, sewer, solid waste, flood relief, parks and open spaces, hospitals, public buildings, or other county functions or services, including creation of cooperative county job development authorities pursuant to section 11-11.1-03, multicounty health units

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[179] Section 40-01.1-04 was also amended by section 9 of House Bill No. 1035, chapter 164, and section 65 of House Bill No. 1275, chapter 278.

pursuant to ~~sections 23-14-01.1 through 23-14-01.6~~ chapter 23-35, regional planning and zoning commissions pursuant to section 11-35-01, boards of joint county park districts pursuant to chapter 11-28 or a combination of boards of park commissioners with a city pursuant to chapter 40-49.1, or multicounty social service districts pursuant to chapter 50-01.1.

SECTION 5. AMENDMENT. Section 54-52-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52-02. Formulation of plan - Exclusion of employees covered by plans in existence. All departments, boards, institutions, commissions, or agencies of the state of North Dakota, the Garrison diversion conservancy district, district health units, the supreme court, and the district courts, hereinafter referred to as agency, shall participate in a retirement system which will provide for the payment of benefits to state and political subdivision employees or to their beneficiaries thereby enabling the employees to care for themselves and their dependents and which by its provisions will improve state and political subdivision employment, reduce excessive personnel turnover, and offer career employment to high-grade men and women. However, a city health department providing health services in a ~~county and city~~ city-county health district formed under ~~section 23-14-01.1~~ chapter 23-35 is not required to participate in the public employees retirement system but may participate in the public employees retirement system under section 54-52-02.1. Employees presently covered by a pension plan or retirement plan to which the state is contributing, except social security, are not eligible for duplicate coverage.

SECTION 6. AMENDMENT. Subsection 13 of section 58-06-01 of the North Dakota Century Code is amended as follows:

13. To ~~be and act as a~~ request assistance from a county or district board of health or the state department of health.

SECTION 7. REPEAL. Chapters 23-03, 23-04, 23-05, section 23-07-04, and chapter 23-14 of the North Dakota Century Code are repealed.

Approved March 26, 1999
Filed March 26, 1999

CHAPTER 243

HOUSE BILL NO. 1185

(Representatives Price, Rose)
(Senators DeMers, Kilzer, Thane)
(At the request of the State Department of Health)

RABIES CONTROL

AN ACT to create and enact chapter 23-36 of the North Dakota Century Code, relating to rabies control; to repeal sections 23-01-18 and 23-01-19 of the North Dakota Century Code, relating to rabies control; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 23-36 of the North Dakota Century Code is created and enacted as follows:

23-36-01. Definitions. As used in this chapter:

1. "Bite" means any penetration of the skin by an animal's teeth.

2. "Clinical symptoms of rabies" means physical signs or symptoms, or animal behavior that would lead a reasonably prudent veterinarian to conclude that a diagnosis of possible rabies is indicated.

3. "Confinement" means separation of an animal from humans, other than the owner, caretaker, a member of the owner's family, or the caretaker's employees, and from other animals, by means of a building, cage, fence, pen, or other secure enclosure that restricts the animal's movement within definite boundaries and prevents the animal from exiting the enclosure.

4. "Department" means the state department of health.

5. "Domestic animal" means any dog [canis familiaris], cat [felis domestica], horse, mule, bovine animal, sheep, goat, bison, llama, alpaca, swine, or captive-bred, currently vaccinated ferret.

6. "Emergency" means a situation in which an immediate search and seizure of an animal is necessary and authorized by section 8 of article I of the Constitution of North Dakota and the fourth amendment to the Constitution of the United States because of a risk of death or serious bodily injury to a human or another animal.

7. "Exposure to rabies" means any bite or scratch, and includes any nonbite contact of an individual with an animal, animal tissue, or fluids that are defined as an exposure to rabies by the federal advisory committee on immunization practices referred to in Public Law No. 103-66 [107 Stat. 636, 642; 42 U.S.C. 1396s(e)].

8. "Impound" means quarantining an animal at a public pound or an animal facility of a licensed veterinarian.

9. "Law enforcement officer" has the meaning of that term as set forth in section 12.1-01-04.

10. "Quarantine" means confinement in a fixed area that keeps a possibly rabid animal secure and isolated from all other animals so there is no reasonable possibility of rabies being mechanically transmitted from the confined area.

11. "Vaccinated animal" means an animal that has been vaccinated in compliance with the compendium of animal rabies control issued by the national association of state public health veterinarians.

12. "Wild mammal" means any animal of the order mammalia which is not a domestic animal and includes any hybrid of a domestic animal and a mammal regardless of whether the animal is:

    a. Wildlife as defined in section 20.1-01-02; or

    b. Held in private ownership.

23-36-02. Policy - Local authority.

1. The department shall establish a rabies control program that must place primary emphasis on human exposure to rabies.

2. The department shall consider national peer-reviewed recommendations for the control of rabies during the development of the department's rabies control program.

3. This chapter may not be construed to limit the authority of any local agency to control or prevent rabies, and, upon request, the department may assist any local agency in rabies control and prevention activities, but the fact that possible rabies exposure is subject to a local ordinance does not limit the department's authority under this chapter.

4. This chapter may not be construed to limit a law enforcement officer's ability to immediately seize, humanely kill, and request the testing of an animal for rabies if emergency circumstances exist that endanger human health or safety.

23-36-03. Enforcement authority.

1. The department, or an agency acting on the department's behalf, may promptly seize and humanely kill, impound at the owner's expense, or quarantine any animal if the state health officer, or the state health officer's designee, has probable cause to believe the animal presents clinical symptoms of rabies.

2. The department, or an agency acting on the department's behalf, may promptly seize and humanely kill, impound at the owner's expense, or quarantine any wild mammal that is not currently vaccinated for rabies by a vaccine approved for use on that species by the national association of state public health veterinarians, inc., or any stray or unwanted domestic animal, if the state health officer, or the state health officer's designee, determines the animal is a threat to human life or safety due to the possible exposure of an individual to rabies.

3. The department, or an agency acting on the department's behalf, may promptly seize and quarantine, or impound at the owner's expense, any dog, cat, or currently vaccinated ferret for a period of ten days, or any other domestic animal for a period not exceeding six months, if the state health officer, or the state health officer's designee, determines the animal is a threat to human life or safety due to the possible exposure of an individual to rabies.

4. If an animal is humanely killed under this section, then at the request of the state health officer, or the state health officer's designee, the animal's brain must be tested for rabies by the state microbiology laboratory of the department if there is possible human exposure to rabies and by the North Dakota veterinary diagnostic laboratory in any other case.

5. If an animal that has bitten or otherwise exposed an individual or another animal is not seized for testing, a law enforcement officer with jurisdiction over the place where the animal is located may determine whether to impound or quarantine the animal under subsection 3 and which method of confinement to use.

6. A licensed veterinarian shall examine, at the owner's expense, a confined animal on the first and last day of the animal's confinement and, at the request of the department or a local public health unit, at any other time during confinement.

23-36-04. Administrative search warrant. Except in the case of an emergency, the department, or another state or local agency acting on the department's behalf, may seize an animal located on private property only as authorized by an administrative search warrant issued under chapter 29-29.1. A warrant to seize an animal under this section must include a request to quarantine, impound, or humanely kill and test the animal.

23-36-05. Assistance of state and local agencies. If a warrant is issued under section 23-36-04 and upon written request of the department, the game and fish department, the state veterinarian, or the wildlife services program of the United States department of agriculture animal and plant health inspection service shall provide assistance to the department in any action to seize, impound, quarantine, or test an animal suspected of having rabies or that has possibly exposed an individual to rabies, and shall carry out any other preventive measures the department requests. For purposes of this section, a request from the department means only a request for assistance as to a particular and singular suspicion of exposure to rabies and does not constitute a continuous request for assistance.

The duty of the game and fish department to cooperate and provide assistance under this section is limited to cases involving a wild mammal and is applicable only if no other agency is available for law enforcement or animal control services.

23-36-06. Payment for postexposure treatment. The department may provide, at no cost, rabies postexposure vaccine to an individual possibly exposed to rabies if the department determines the individual is financially unable to pay for the postexposure vaccine treatment.

23-36-07. Penalty for violation of order or interference. A person is guilty of an infraction if the person:

1. Conceals, releases, or removes an animal from the place where the animal is located with intent to impair that animal's availability for seizure under that warrant or order while the person is under the belief that a search warrant or judicial order is pending or is about to be issued for the seizure of an animal;

2. Fails to impound or quarantine an animal for the period and at the place specified after having been ordered to impound or quarantine the animal; or

3. Recklessly hinders any state or local official in any pending or prospective action to seize, impound, quarantine, or test an animal under this chapter.

23-36-08. Limitation on liability. Subject to any other requirements of section 32-12.2-02, the owner of an animal may bring a claim for money damages, and may recover an amount up to the replacement value of the animal, if the owner establishes that before the animal was seized and tested for rabies under this chapter, the state health officer, or the state health officer's designee, knew or recklessly failed to determine that the animal, at the time of the exposure, was lawfully owned and licensed and that:

1. The animal was a wild mammal, and, at the time of the exposure, was currently vaccinated with a vaccine approved for use on an animal of that species by the national association of state public health veterinarians, inc.;

2. The animal had not bitten, scratched, or otherwise possibly exposed a person to rabies; or

3. The animal was a domestic animal and there was not probable cause to believe the animal was rabid.

23-36-09. Owner's responsibility.

1. The owner of an animal is liable for the cost of quarantine and veterinary services, and for the cost of any postexposure treatment received by an individual who is possibly exposed to rabies by the owner's animal, if the animal is not:

   a. Licensed or registered as required by any state or local law or rule applicable to that species; or

   b. Confined or vaccinated as required by any state or local law or rule applicable to that species.

2. This section may not be construed to limit any other liability of an animal owner for injury or damage caused by the owner's animal.

SECTION 2. REPEAL. Sections 23-01-18 and 23-01-19 of the 1997 Supplement to the North Dakota Century Code are repealed.

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

Approved March 29, 1999
Filed March 29, 1999

CHAPTER 244

HOUSE BILL NO. 1404

(Representatives Wald, Grosz, Schmidt)
(Senators Christmann, Kroeplin, B. Stenehjem)

PETROLEUM RELEASE COMPENSATION

AN ACT to create and enact a new subdivision to subsection 13 of section 2 of chapter 299 of the 1991 Session Laws as amended by section 1 of chapter 286 of the 1993 Session Laws and five new subsections to section 27 of chapter 299 of the 1991 Session Laws, relating to the definition of tank and third-party judgments under the petroleum release compensation fund; to amend and reenact sections 17, 19, and 33 of chapter 299 of the 1991 Session Laws, relating to the petroleum release compensation fund; to repeal section 29 of chapter 299 of the 1991 Session Laws, relating to petroleum spill reports; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 13 of section 2 of chapter 299 of the 1991 Session Laws as amended by section 1 of chapter 286 of the 1993 Session Laws is created and enacted as follows:

An aboveground tank used to feed diesel fuel generators. Upon application, the owner or operator of an aboveground tank used to feed diesel fuel generators may register the tank and is eligible for reimbursement under this Act.

SECTION 2. AMENDMENT. Section 17 of chapter 299 of the 1991 Session Laws is amended and reenacted as follows:

SECTION 17. Registration fee. An owner or operator of a tank shall pay an annual registration fee of ~~seventy-five~~ fifty dollars for each aboveground ~~tank and one hundred twenty-five dollars for each~~ or underground tank owned or operated by that person. If on the first day of July in any year the amount of money in the petroleum release compensation fund is less than five million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If on the first day of July in any year the amount of money in the petroleum release compensation fund is five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. An owner or operator of a tank that was required to be registered by law on or before July 1, 1999, shall pay seventy-five dollars for each aboveground tank and one hundred twenty-five dollars for each underground tank owned or operated by that person for any previous years that the tank was required to be registered for which a fee was not paid. The registration fees collected under this section must be paid to the administrator for deposit in the state treasury for credit to the petroleum release compensation fund.

SECTION 3. AMENDMENT. Section 19 of chapter 299 of the 1991 Session Laws is amended and reenacted as follows:

SECTION 19. Application for reimbursement. Any owner or operator who is a first-party claimant who proposes to take corrective action or has undertaken

corrective action in response to a release, the time of such release being unknown, may apply to the administrator for partial ~~of~~ or full reimbursement under section 18 of this Act. An owner or operator who is a first-party claimant may be reimbursed only for r~~eleases~~ d~~iscovered~~ ~~and~~ r~~eported~~ ~~after~~ ~~the~~ ~~effective~~ ~~date~~ ~~of~~ ~~this~~ ~~Act~~ costs incurred after July 1, 1989, even if the releases were discovered before July 1, 1989, up to the maximum of twenty-five thousand dollars per location.

SECTION 4. Five new subsections to section 27 of chapter 299 of the 1991 Session Laws are created and enacted as follows:

The fund shall pay a judgment against an owner, operator, or dealer awarded to a third party as a result of a third-party claim against an owner, operator, or dealer covered by the fund, excluding claims for punitive damages or damages for criminal acts.

The fund shall pay for corrective action as awarded to a third party in any judgment against an owner, operator, or dealer.

Liability of the fund to third parties may not exceed, per person, the maximum liability allowed per person under subsection 2 of section 32-12.2-02. Maximum liability of the fund, including all claims by third parties, may not exceed, for any release site, the maximum provided in section 18 of chapter 299 of the 1991 Session Laws.

A third party may not bring an action against any owner, operator, or dealer more than three years after a corrective action plan has been approved by the department if the owner, operator, or dealer fully implements and complies with the corrective action plan.

In investigating a release site or reviewing the implementation of any corrective action plan approved by the department, the department shall determine whether the release currently threatens public health or the environment. The department shall require, based on science and technology appropriate for the site, any monitoring, remediation, or other appropriate corrective action that is reasonably necessary to protect public health or the environment. The department may require corrective action at a release site at any time after a release occurs.

SECTION 5. AMENDMENT. Section 33 of chapter 299 of the 1991 Session Laws is amended and reenacted as follows:

SECTION 33. EXPIRATION DATE. This Act is effective through ~~June 30, 1999~~ July 31, 2009, and after that date is ineffective.

SECTION 6. REPEAL. Section 29 of chapter 299 of the 1991 Session Laws is repealed.

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

Approved April 7, 1999
Filed April 8, 1999